

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3631 of 2012 (O&M)

Date of Order:15.11.2017

Surender Singh

..Appellant

Versus

Gokal Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhir Aggarwal, Advocate,
for the appellant.

Mr. B.K.Bagri, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Defendant no.3-appellant is in regular second appeal against the judgment passed by the learned first appellate Court.

The dispute in the present case is whether the plaintiffs are entitled to declaration or not that they are occupancy tenants and have become owners of the property.

It is not disputed before me that the plaintiffs or their predecessors were recorded as “Gair Marusi” tenants right from inception. The literal meaning of “Gair Marusi” is non-occupancy tenant.

Learned trial Court after discussing the evidence in detail, dismissed the suit filed by the plaintiffs. However, learned first appellate Court reversed the findings without noticing the distinction between the occupancy tenant and the non occupancy tenant.

This issue is not *res-integra* as this Court while examining the issue in detail in RSA No.5685 of 2014, decided on 26.10.2017 has taken a view that the “Gair Marusi tenant i.e. non occupancy tenant cannot claim

that he has become occupancy tenant and consequently become owner in view of the provisions of the Punjab Tenants (Vesting of Proprietary Rights) Act, 1953. This Court has relied upon the judgment reported as **Jaleb Khan and others v Commissioner, Gurgaon Division, Gurgaon and others, 2010(1) Punjab Law Reporter, 111.**

In view thereof, the suit filed by the plaintiffs for declaration that they have become owners of the property being occupancy tenants cannot be decreed.

Learned counsel for the respondents has submitted that the plaintiffs are sitting tenants on the land in dispute and, therefore, they cannot be dispossessed except in accordance with the procedure prescribed under the law.

There is substance in the argument of learned counsel for the respondents.

Once the plaintiffs are non occupancy tenants sitting on the land, they can only be ejected in accordance with the provisions of Punjab Tenancy Act, 1887, supplemented by the Punjab Security of Land Tenure Act, 1953.

In view thereof, the appeal is partly accepted. The judgment of the first appellate Court to the extent declaring the plaintiffs to be occupancy tenants and consequently owners is set aside. However, the decree for permanent injunction is passed against the defendants-appellants not to forcibly dispossess the plaintiffs except in accordance with law.

November 15, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No