

**118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 4076 of 2012(O&M)
Date of decision : 17.11.2017**

Bhura Ram

..... Appellant

versus

Rama and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Jatin Hans, Advocate for the appellant.

Mr.Jatinder Malik, Advocate
for respondents No. 1 to 3 and 5 to 12.

AMIT RAWAL, J. (Oral)

CM-3449-C-2013

This is an application for impleading the LRs of deceased Ram Kumar-respondent No.4.

For the reasons recorded in the application, the same is allowed subject to all just exceptions. Persons mentioned in para 3 of the application are impleaded as legal representatives of deceased respondent No.4. Registry to make necessary correction in the memo of parties.

Main case

The appellant-plaintiff is aggrieved of the findings rendered by both the courts below, whereby relief of declaration claiming the ownership under the provisions of Sections 5 and 8 of the Punjab Tenancy Act 1887

(hereinafter referred to as 'the Act') has been denied whereas the other relief

of injunction has been granted whereby the defendants have been restrained from dispossessing the plaintiff from the suit property except in due course of law.

Mr.Jatin Hans, learned counsel appearing on behalf of the appellant submits that the aforementioned suit was filed on the premise that plaintiffs have become owner in possession of the land comprised in Khewat No. 63, Khatauni No. 81, Khasra No. 72/4/2(6-16), 5(8-0), 6(8-0), 7/1(6-16),, 14/2(3-0),15(8-0), 16(8-0), 25(8-0), 73//6/2(4-0), 10(8-0), 11(8-0), 18/2(6-1), 19(8-0), 20(8-0), 21(8-0), 22/1(6-16), 22/2(0-17), 80//1/1(0-17), 2/1(1-3), 81//5(8-0) kit 20 total 130 Kanal 17 Marla situated in revenue estate Morkan, Tehsil Siwani, District Bhiwani as per Jamabandi for the year 2004-2005 , on the premise of long possession and in this regard he has proved on record Jamabandies Ex.P-1 to Ex.P13 annexed with the appeal as Annexure A-1 to establish that under the column No. 5 i.e. where the name of the cultivator is prescribed, to be in possession of their predecessor-in-interest and the land had been shown to be a Bashra Parta Malkan i.e. on proprietors rent. Therefore, the case of the appellant could be covered under the provisions of Section 5(2) of the Act. The Lower Appellate Court though referred to the aforementioned provisions but declined to refer to the pleadings and the evidence. The Lower Appellate Court, as per the provisions of Section 96 C.P.C. , was duty bound to adjudicate upon all the issues muchless the point of determination as admissible under Order 41 Rule 31 CPC but having failed to do so the judgment is not sustainable in the eyes of law. In support of his contention he has referred to the unreported judgment of this Court in **RSA No. 883 of 2015 decided on**

01.06.2016, Ram Chander(deceased) through LR's and others v. Pehlad

(deceased through LRs) and others and RSA No. 5685 of 2014 decided on 26.10.2017, Tara Chand and others v. Bihari Lal and others. It is a clear case where the matter should be remanded to the Lower Appellate Court for fresh adjudication.

Mr. Jatinder Malik, learned counsel appearing for the respondent-defendants submitted that the status of the plaintiff-appellant is of 'Gair Marusi' i.e. tenant at will without payment of rent and, therefore, the declarastion of ownership sought under the aforementioned provisions of the Act could not have been granted. In support of his contention he has referred to the judgment rendered by this Court in the case of **Jaleb Khan and others v. Commissioner, Gurgaon Division, Gurgaon and others** , 2009(4) RCR(Civil) 385. He further submitted that even if the tenant had been paying the rent much lesser than the land revenue even then his status would be that of a Gair Marusi. He thus urges this court for the dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book.

To resolve the controversy between the parties, it would be appropriate to reproduce Section 5(2) of the Act which is as follows:-

“5. Tenants having right of occupancy - (1).....

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he had fulfilled the conditions of clause (a) of sub-section (1).....
.....”

The findings rendered by the Lower Appellate Court on the arguments and the points urged on merits in the memo of appeal on the applicability of Sub-

Section 2 of Section 5 of the Act are as follows:-(Paras No. 7 and 8)

“7. It was argued by learned counsel for the appellants that admittedly the case of the appellants did not fall within the ambit of Section 5(1) of the Punjab Tenancy Act, 1887 but the case of the appellants fell within the ambit of Section 5(2) of the Punjab Tenancy Act, 1887 and residuary Section i.e. Section 8 of the Punjab Tenancy Act, 1887. It was further argued by learned counsel for the appellants that the findings of the learned Trial Court that provision of Section 5(2) of the Punjab Tenancy Act, 1887 was not an independent clause was wrong as this was an independent clause. The reading of the Section 5 of the Punjab Tenancy Act, 1887 shows that latter clause is dependant upon the former and the findings of the learned Trial Court on this aspect cannot be interfered with.

8. Learned trial court was impeccable in its wisdom in holding that section 5(2) was interconnected with section 5(1) of the Punjab Tenancy Act, 1887 because what would be the outcome of the fulfilment of ingredients of section 5(2), it would be towards achievement of the goal as prescribed in section 5(1) of the Punjab Tenancy Act, 1887. Section 5(2) of the Punjab Tenancy Act, 1887 provides that if the tenants proved the possession over the property in question since 30 years or so then it may be a ground to presume that they are in possession of the disputed property since three generations and this is sine qua non as per section 5(1) for acquiring the occupancy rights w.e.f. commencement of the Act of 1887. Merely because the tenants are in possession for 30 years or so would not entitle them to claim occupancy rights in view of section 5(1) of the Punjab Tenancy Act rather it only leads towards a presumption that they are in possession since three generations. It cannot be held that Section 5(1) of the Punjab Tenancy Act, 1887 is distinctive rather these sections are so much interwoven that those cannot be read in isolation and for proving the ingredients of section 5(1), one has to go through section 5(2) whereas in the present case it is neither the pleadings of the plaintiffs that they are in possession of

the property since three generations. The case of the appellants is not that at the time of commencement of the tenancy more than two generations of the appellants were having tenancy in their favour over the suit land. In the facts and circumstances of the case, the plaintiffs have miserably failed to prove that their case falls within the ambit of Section 5(1) of the Punjab Tenancy Act, 1887.”

The Jamabandies Ex.P1 to Ex.P13 produced on record had not been adverted to, muchless not controverted by learned counsel for the defendant-respondent in the evidence. Looking to the documents on record, in my view, the following substantial question of law arises for determination:-

- i) *Whether the judgment and decree of the Lower Appellate Court in not referring or adverting to the documentary evidence would be a perversity?*

The aforementioned question in my view would definitely arise for adjudication as it is a clear case of perversity in not referring to the documentary evidence on record being last court of fact and law. The Appellate Court ought to have dealt with the controversy and given a finding with regard to tenancy or non-tenancy of the appellants keeping in view their status as reflected in the Jamabandi for the year 1959-60. This Court had also on this point remanded the matter to the lower Appellate Authority to decide the appeal afresh. The judgments relied upon by Mr. Jatin Hans also deal with the situation with regard to the payment of less revenue than the one which was fixed. I shall be refraining to comment that this fact of payment of rent would be subject to the adjudication for the Additional District Judge to ponder upon. As an upshot of my findings and the

judgments relied upon by learned counsel, the judgment and decree of the Lower Appellate Court is set aside and the matter is remanded to the Additional District Judge to deal with the points of consideration as noticed above in accordance with law as expeditiously as possible preferably within a period of six months. Parties through counsel are directed to appear before the ADJ on 20.12.2017.

**(AMIT RAWAL)
JUDGE**

**November 17, 2017
sunita**

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No