

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

**Regular Second Appeal No.5298 of 2012 (O&M)
Date of decision:12.07.2017**

Bhoo Dutt and others

.....Appellants

Versus

Daya Ram and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Om Parkash Sharma, Advocate,
for the appellants.

Ritu Bahri, J.

CM-14868-C-2012

For the reasons mentioned in the application, same is allowed and delay of 98 days in filing of the appeal is condoned.

RSA No.5298 of 2012

This appeal has been directed against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Addl. Civil Judge (Senior Division), Faridabad and the Additional District Judge, Faridabad, whereby suit filed by the plaintiffs-appellants for declaration and possession, has been dismissed.

Bhoo Dutt etc.-plaintiffs (appellants herein) filed a suit seeking decree for possession of land to the extent of 7/10 share i.e. 5 kanals 2 marlas against the defendants-respondent. As per plaintiff-appellants, they were owners of the agricultural land mentioned in the head note of the plaint. Earlier, Daryav Singh, Mohkam Singh along with Ramji Lal, Tulsi Ram and Bhoo Dutt were tenants under the plaintiffs. Boochi son of Mehboob was tenant to the extent of half share and remaining persons were

tenant of remaining share. Daryav Singh, Mohkam Singh and Boochi had

died without leaving any son, widow and mother, therefore, the tenancy rights of these persons had been reverted back to the landowners i.e. plaintiffs, as per Section 8 of the Punjab Security of Land Tenures Act, 1953. It was further stated that the defendant-respondents, in collusion with the revenue authorities, got entered their names in column No.5 of the jamabandi for the year 2004-05, as tenants under the plaintiffs in the entire suit property. The defendants were tenants in possession over the suit land only to the extent of 3/10 share. However, they were in illegal possession to the extent of 7/10 share which came to 5 kanals 2 marlas. Appellant-plaintiffs had requested the defendants to hand over the vacant possession of the land in dispute to the extent of 7/10 share, but they had refused to do so. Hence, the suit.

Upon notice, defendant-respondents filed written statement taking preliminary objections with regard to locus standi; cause of action and estoppel. On merits, it was stated that previously Kishan Lal and Bucha sons of Mehboob i.e. predecessor in interest of the defendants, were joint tenants in possession over the suit land as *gair morusi bashrah malkan wajah kast derina* on payment of land revenue and cess under the predecessors of the plaintiffs and thereafter, the plaintiffs. Kishan Lal died leaving behind Daryab Singh, Mokam Singh, Ramji Lal, Tulsi Ram and Bhu Dutt as his sons and accordingly, after the death of said Kishan Lal said Daryab Singh, Mokam Singh, Ramji Lal, Tulsi Ram and BhuDutt along with their uncle Bucha became joint tenants in possession over the suit land. It was further contended that Bucha also died on or about 04.10.1976 leaving behind Daryab Singh, Mokam Singh, Ramji Lal, Tulsi Ram and Bhu Dutt as his legal representatives, who were also the joint tenants in the suit land along

Singh, Mokam Singh, Ramji Lal, Tulsi Ram and Bhu Dutt sons of Kishan Lal became joint tenants in possession of the suit land and they remained in cultivating possession thereof after the death of said Bucha. It was further stated that Mokam Singh died issueless on or about 29.05.1986 leaving behind his brother Daryab Singh, Ramji Lal, Tulsi Ram and Bhu Dutt who continued to be joint tenants in possession of the suit land after the death of said Mokam Singh. Daryab Singh also died issueless on or about 02.08.1988 leaving behind his brothers Ramji Lal, Tulsi Ram and Bhu Dutt who continued to be joint tenants in possession over the suit land after the death of Daryab Singh. Ramji Lal also died leaving behind defendant Nos. 1 to 3 as his sons and in this manner defendants have become joint tenants in possession of the suit land as *Gair Morusi Bashrah Malkan Wajah Kast Derina* on payment of land revenue and cess under the plaintiffs. Since, the defendants and their predecessors-in-interest have been the joint tenants in possession of the suit land as *Gair Morusi* for the last more than 50 years under the plaintiffs, they have acquired occupancy rights in the suit land. They have also claimed that their suit for declaration for occupancy rights was also pending against the plaintiffs. The defendants also denied that the entries in the revenue record were illegal, null and void and liable to be corrected.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiffs are owners of agricultural land detailed in para No.1 of the plaint? OPP
2. Whether plaintiffs are entitled to get possession of the suit property to the extent of 7/10 share? OPP
3. Whether the plaintiffs have no locus standi to file the present suit? OPD

4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Whether the plaintiffs have concealed the true and material facts from the Court? OPD
6. Whether the defendants have acquired occupancy rights in the suit land by virtue of Proprietary Rights Act? OPD
7. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

While dismissing the suit, trial Court has observed that Buchi had expired in the year 1976 and thereafter, his share was cultivated by other tenants. At that time, no objection was raised by the plaintiff-appellants. Similarly, Daryab Singh had expired in the year 1988 and Mokam Singh had expired in the year 1986 and their shares were also cultivated by other tenants, but plaintiff-appellants did not raise any objection at that time. This suit was filed by the plaintiffs in the year 2008 by claiming that they were entitled to get possession over 7/10 share in the suit land. After the death of Daryab Singh, Mokam Singh and Buchi, the suit land is cultivated by Daya Ram, Prem Chand and Manohari, who are sons of Ramji Lal (tenant) and whose names have been recorded in the Jamabandi for the year 1999-2000 Ex.P1. Ramji Lal had also expired and after his death, whole of the land was cultivated by Daya Ram, Prem Chand and Manohari. Thereafter, they filed a petition before the Assistant Collector, IInd Grade, which was allowed vide order dated 21.01.2004 Ex.P8. On the basis of this order, names of defendant Nos. 1 to 3 were entered in the column of cultivation in the Jamabandi for the year 2004-05. Defendant-respondents have already filed a suit against the plaintiffs (appellants) to declare them as occupancy tenants.

Since tenancy in the present case was joint, the landlord(s) cannot

claim the share of any tenant whose line has become extinct. Reliance has been placed on a judgment passed in **Mauza Silauthi Vs. Raj Rup and another**, 1949 PLJ 100, wherein it has been held that joint tenants of a holding are to be recorded as a single tenant and as long as any of them or the descendants of any of them survive, the landlord cannot claim the share of any tenant whose line has become extinct. This view has been followed by this Court in **Rana Raghubir Singh and others Vs. Guro and others**, 1970 PLJ 639, wherein it has been held as under:-

“4. Even otherwise the insertion of clause (d) in the said section by an amendment in 1939 does not appear to have made any difference in the law laid down by a Full Bench of the Lahore High Court in ***Moti Lal and another v. Kartar Singh and others***, AIR 1930 Lahore 515. In that case the persons who were in possession as tenants-in-common were not even related but still the rule of survivorship was brought in to prevent an extinguishment of the occupancy rights. In the present case, the plaintiff-respondent who was a collateral of the deceased could not have a weaker case than he would have had if he had not been related to the deceased and if he had based his rights only on the ground that the ancestors of the deceased and of the plaintiff-respondent were at one time in possession as tenants-in-common or joint tenants. In that case, B, C and D occupancy tenants under the landlord. A, B, C and D were not members of any joint Hindu family nor were they joint tenants in the sense in which the expression is used in English Law. On the line of D becoming extinct and there being no person who could succeed under Section 59 of the Punjab Tenancy Act, his share in the holding was held to have passed to the other occupancy tenants B and C and not to lapse to the landlord. The following observations of Sir Merydeth Plowden were reproduced from Ganda Singh V. Gulab Singh, (1879) 159 P.R. 1879:-

“the Tenancy Act makes no express provisions for 'joint' owners of a right of occupancy but there is nothing in its terms which excludes the recognition of such joint ownership. When such joint ownership exists all the co-sharers constitute, as regards the landlords, a single tenant having a right of occupancy and the entire land, subject to the joint right, is the land in occupation of such tenants.”

In the present case, Bhoo Dutt appeared in the witness box as PW-1 and during cross-examination, he admitted that Krishan Lal and Boocha were joint tenants in possession over the disputed land. After the death of Krishan Lal, Daryav Singh, Mohkam Singh, Ramji Lal, Tulsi Ram, Bhoo Dutt and their uncle Boocha became joint tenants of the suit property. Boocha Ram died in the year 1976 and after his death, Daryav Singh, Mohkam Singh, Ramji Lal, Tulsi Ram and Bhoo Dutt became the joint tenants of the disputed land. Mohkam Singh died in the year 1986 and after his death, Daryav Singh, Ramji Lal, Tulsi Ram and Bhoo Dutt became the joint tenants in possession of the disputed land. After the death of Daryav Singh, his brother Ramji Lal, Tulsi Ram and Bhoo Dutt remained in cultivating possession over the disputed land. After the death of Ramji Lal, his sons defendant Nos. 1 to 3 were in cultivating possession. Hence, from the cross-examination of Bhoo Dutt (PW-1), it became abundantly clear that it was a joint tenancy. Applying the ratio of **Proprietors of Mauza Silauthi Vs. Raj Rup and another**, 1949 PLJ 100, the landlord cannot claim the share of any tenant whose line has become extinct. In the present case, after the death of Boocha Ram, Mohkam Singh, Daryav Singh and Ramji Lal, son of Ramji Lal (defendant Nos.1 to 3) were in cultivating possession over the suit land. There being a joint tenancy, suit of the plaintiffs has been rightly dismissed by both the Courts below.

Learned counsel for the appellants has not been able to refer any judgment contrary to the law laid down by this Court that in a case of joint tenancy, if any of the descendants of tenants survives, the landlord can claim the share of any tenant, whose line has become extinct. Hence, after going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this

Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

12.07.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No