

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2240 of 2015 (O&M)

Date of decision : August 25, 2017

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Moti Ram and others

.....Appellants

Versus

Ram Parshad and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Adarsh Jain, Advocate for the appellants.

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RITU BAHRI, J.

The appellants/defendants no. 1 to 3 have come up in the present regular second appeal against the judgment dated 11.10.2012 passed by the Civil Judge (Junior Division), Palwal and against the judgment dated 28.11.2014 passed by the Additional District Judge, Palwal vide which an appeal against the judgment of the trial Court was dismissed. Vide the judgment of the trial Court, the suit of the plaintiffs/respondents seeking declaration that the respondents no. 1 to 3/plaintiffs and proforma respondent/proforma defendant are the owners in possession of the suit land comprised in Khewat No. 243, Khatoni No. 287, Rect No.49, Killa No. 22 (4-1), measuring 4 kanals 1 marla situated within the revenue estate of Village Selothi, Tehsil and District Palwal by virtue of Section 3 of the

Punjab occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 was decreed.

Brief facts of the case as stated in the plaint are that the respondents/plaintiffs along with proforma respondent/defendant no.4 are lawful owners in possession of the suit land. Although the appellant/defendant no.1 was alive but in order to create encumbrance, he created fictitious mortgage in favour of appellants/defendants no. 2 & 3 in collusion with Village Patwari. The respondents no. 1 to 3/plaintiffs and their ancestors were in occupation of the suit land for the last more than 30 years and paid no rent beyond the amount of land revenue thereof and the rates and cesses. As per entries made in the record, they were cultivating the suit land as “ *Basharah Malkan Bawazah Kasat Derina*”. They acquired the occupancy rights under Section 5 of the Punjab Tenancy Act, 1887 and by operation of Section 3 of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as ‘the Act’), and attained the status of owners. As per the respondents/plaintiffs, they filed the suit because appellants/defendants were not admitting their claim despite repeated requests.

The appellants/defendants no. 1 to 3 filed joint written statements. On merits, they denied that respondents no. 1 to 3/plaintiffs are owners in possession of the suit land. The respondents no. 1 to 3/plaintiffs never occupied the suit land. The revenue entries, if any, in the names of respondents no. 1 to 3/plaintiffs or their ancestors are false and fictitious. Sh. Alha son of Sh. Chunni has not been impleaded as party who is wrongly written as *gair Morusi Doyam* in the column of jamabandi for the year 1999-2000. It was further stated in the written statement that respondents

no. 1 to 3/plaintiffs and their ancestors never cultivated the suit land as *Ba Sarah Malkaan Ba Wajeh Kast Derina* and the impugned entries are false and fictitious.

Followings issues were framed by the trial Court:

- 1. Whether the plaintiffs are entitled to the declaration, as prayed for?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiffs have no locus standi/cause of action to file the present suit? OPD*
- 4. Whether the plaintiffs are estopped by their own acts and conduct to file the present suit? OPD*
- 5. Whether the suit is time barred? OPD*
- 6. Whether the plaintiffs have not come with clean hands before this Court and have suppressed the true and material facts from this Court? OPD*
- 7. Relief.*

The respondents/plaintiffs in support of their case examined PW-1 Manohar Lal who tendered his affidavit Ex. PW1/A and respondent/plaintiff no.2 Asha Ram himself stepped into the witness box as PW-2. He tendered his affidavit Ex. PW2/A and documents Ex.P1 to Ex.P-18. Thereafter their evidence was closed by their counsel on 13.6.2012 after tendering the documents Ex.P-19, Ex.P-19/x, Ex.P-20 and Ex.P-20/Y to Ex.P26 i.e copies of jamabandis for the year 1944-45 and 1940-41.

On the other hand, appellants/defendants examined DW-1 Hira, who tendered his affidavit Ex.DW1/A and appellant/defendant no.2 Hari Chand himself stepped into the witness box as DW-2 who tendered his affidavit Ex.DW2/A. Thereafter, learned counsel for the appellants/defendants closed their evidence on 1.10.2012 after tendering the document Ex.D1 i.e copy of jamabandi for the year 2004-05 and Mark A i.e photocopy of mutation no. 1744.

Trial Court after going through the evidence on record, decided issue no.1 in favour of respondents/plaintiffs and against the appellants/defendants and held that the respondents/plaintiffs acquired the status of occupancy tenants in terms of Section 5 of the Punjab Tenancy Act, 1887 and have become owners by virtue of Section 3 of the Act. Issues no. 2 to 4 were decided against appellants/defendants and in favour of respondents no. 1 to 3/plaintiffs. Trial Court decreed the suit vide judgment and decree dated 11.12.2012.

Aggrieved with the order of the trial Court, the appellants/defendants no. 1 to 3 preferred an appeal before the lower appellate Court. The lower appellate Court affirmed the findings of the trial Court and dismissed the appeal.

While dismissing the appeal, it was observed by the lower Appellate Court that in the jamabandis produced by respondent no. 1 to 3/plaintiffs from the years 1940-41 to 1999-2000, respondents no. 1 to 3/plaintiffs or their predecessors have been shown as *Gair Morusin Awal Marfat Alha* son of Chunni son of Har Gopal Gair Morusi Doyam. In column no.9, the entry is *Zumgi Gair Morusi Awal Basarah Malkan Ba Wajah Kasht Darina Zumgi Gair Morusi Doyam Basarah Malkan Ba*

Wajah Rehan. This entry figure in favour of respondents no. 1 to 3/plaintiffs fore-fathers in the jamabandi for the year 1940-41 which was repeated in several other jamabandis and khasra girdawries of the later period. Although, respondents no. 1 to 3/plaintiffs or their forefathers have been shown as *Gair Morusi* in column no. 5 and merely by this entry of *Gair Morusi*, he cannot possibly acquire the status of right of *Gair Morusi* (occupancy tenants) and there is no dispute regarding the law laid down in the case of ***Joginder Singh and others vs. The Deputy Commissioner, Kurukshetra and others and Jaleb Khan and others vs. Commissioner, Gurgaon Division, Gurgaon and others*** but these judgments are distinguishable on the facts of the present case.

It was observed by the appellate Court that although respondents no. 1 to 3/plaintiffs and their forefathers have been shown as *Gair Morusi* in column no.5 but in the column no.9 of the jamabandies relied upon by respondents no. 1 to 3/plaintiffs, there is entry of *Basarah Malkan Ba Wajah Kast Derina* which means that they are cultivating the land like owner from the old time without paying any rent to the land owner and they are merely paying only land revenue and cess. Their evidence brought by the respondents no. 1 to 3/plaintiffs squarely bring their case within the meaning and ambit of Section 5(2) of the Punjab Tenancy Act, 1887 which is reproduced as under:-

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

clause (a) of sub-section (1).

As per the above section, if a particular tenant proves that he had continuously been occupying a particular piece of land for 30 years and paid no rent beyond the amount of land revenue which was chargeable, a presumption would arise that such a tenant fulfills the conditions of clause (a) of sub-Section (1) of Section 5 of the Act.

As per entry in column no.9, they were cultivating the land like owner from the old time without paying any rent to the land owner and they are merely paying only land revenue and cess and they have been rightly treated as occupancy tenants as presumption of truth is attached under Section 44 of the Punjab Land Revenue Act. The possession of the respondents/plaintiffs and their forefathers on the land is from the year 1940-41 as per the jamabandi entries. The appellants/defendants made no efforts to get the jamabandies rectified through a Court of competent jurisdiction.

Counsel for the appellants/defendants has argued that no evidence was led by the respondents/plaintiffs to prove that they were tenants on the land and hence they could not held to be occupancy tenants. The trial Court has answered this question by making a reference to judgment in the case of **Smt. Sudha Aggarwal and others vs. Sat Narain and another, 1994 PLJ 688**. In this case, the tenants were cultivating the land in dispute on an annual rent of Rs.50/- since 1954 and there was an agreement between the ancestors of the landlords and the tenants for never ejecting the tenants from the land in dispute. As such, they had acquired the rights of occupancy on land in dispute. Assistant Collector Ist Grade vide his order dated 17.3.1987 had come to the conclusion that the respondents

(tenants) had proved the facts stated in their suit application and granted them rights of occupancy tenants under the Punjab Tenancy Act. The petitioners filed an appeal against the orders of the Assistant Collector Ist Grade before Collector who dismissed it. Revision petition was filed against the orders of the collector before Commissioner, Gurgaon Division, Gurgaon who recommended that the orders of the Collector and the Assistant Collector Ist Grade be set aside. In reference made by the Commissioner, Gurgaon Division, Gurgaon, revision petition was dismissed by the Financial Commissiner of Haryana vide its order dated 4.11.1993 by observing that the land was cultivated on favourable rent since 1954. The respondents have been successful in raising the presumption that there was an implied agreement between the parties. It was for the landlord to rebut that his implied promiser did not exist. There had been no efforts on the part of the landlord to get the rent increased after 1954. It was held that there were no legal infirmities in the orders of the Assistant Collector Ist Grand and the Collector and they were upheld. Revision Petition was dismissed.

In the case of **Smt. Sudha Aggarwal and others (supra)** , the tenancy had started in 1948 and the application for ejectment was filed in 1977 i.e after 29 years. There was no agreement in writing between the parties but from the circumstances, it stands proved that there was implied promise not to eject the tenant. Rent was increased in 1954 and thereafter the rent has not been increased. It was for the landlord to rebut that the implied promiser did not exist. It was held that the respondents-tenants have been successful in raising the presumption that there was an implied agreement between the parties. Respondents-tenants were rightly granted

rights of occupancy tenants. In the present case, as per the jamabandies, respondents/plaintiffs and their predecessors were found to be in possession of the agricultural land since 70 years and hence the presumption has been rightly answered in favour of the respondents/plaintiffs that they were occupancy tenants as per Section 5 of the Punjab Tenancy Act, 1887.

Counsel for the appellants/defendants has argued that the respondents/plaintiffs have not led any evidence to show that there was any agreement that they were tenants on the suit land and that the rent had never been increased. No such averment has been made in the plaint. This aspect has been looked into by the trial Court and in paragraph 14, it has been observed that the revenue entries are reflecting the continuous possession of the plaintiffs and their predecessors for the last more than 70 years. Thus, a strong presumption of implied promise not to eject a tenant can be safely raised in this matter. However, the onus was on the appellants/defendants to rebut the said presumption which they have not done.

This aspect has been considered by this Court in the case of ***Munni Ram and others vs. Phullia and Lalu, 1974 PLJ 369 (P&H)***, wherein this Court has examined Section 8 & 9 of the Punjab Tenancy Act, 1887. In Paragraph 6 of the judgement, this Court has laid down the following proposition of law:

(i) the intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement which came into existence at

the time of the commencement of the tenancy;

(ii) mere length of possession does not entitle a tenant to acquire occupancy rights in the land in his possession as a tenant;

(iii) the intention behind the wide scope left by Section 8 of the Tenancy Act is:

(a) not to restrict the tenant in any way from establishing his rights of occupancy; and

(b) to presuppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Sections 5 and 6 of the Tenancy Act;

(iv) in cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted;

(v) a strong presumption of the implied promise not to eject a tenant, and therefore, of the existence of an occupancy tenancy in favour of such a tenant can be raised;-

(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effort was made by the landlord to enhance the rent; and

(b) where despite the existence of a stray entry which is

inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant.

In view of the guidelines laid down in ***Munni Ram and others vs. Phullia and Lalu, 1974 PLJ 369 (P&H)***, no substantial question of law arises for determination in the present regular second appeal. Interference of this Court is not warranted as there is no illegality and infirmity in the judgments passed by the Courts below.

In view of all that has been discussed above, present regular second appeal is dismissed.

August 25, 2017
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No