

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

RSA No.3867 of 2016 (O & M)
Date of decision :04.10.2017

Sita Ram (since deceased) through his LRs ...Appellant

Versus

Gram Panchayat ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.10028-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 4 days in filing the appeal is condoned.

Application is allowed.

Main Case

Plaintiff (since deceased) through his legal heirs is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for declaration to the effect that he has become owner as per provisions of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 as he had acquired occupancy rights under Section 5(2) of the Punjab Tenancy Act, 1887 (' Punjab Tenancy Act, 1887' – for short). Plaintiff also claimed consequential relief of permanent injunction. Defendant-Gram Panchayat did not choose to contest the suit.

After appreciating the ex parte evidence produced by the plaintiff, the Court found from examination of revenue record that the

plaintiff has taken the land on lease from the Panchayat and is cultivating the same as tenant. Plaintiff had claimed that initially the lease was for a period of 10 years and thereafter, he has been continuing in possession thereof.

With these findings, the learned trial Court dismissed the suit. Appeal filed by the legal heirs of the plaintiff was also dismissed, after re-appreciating the evidence available on the file.

Learned counsel for the appellant has vehemently argued that the judgments passed by the Courts below are result of misreading of evidence. He has submitted that the plaintiff has been in continuous possession without payment of the rent and, therefore, entitled to be declared as occupancy tenant as per Section 5(2) of the Act.

Before a tenant can be declared to be occupancy tenant, there are certain requirements of Section 5, which must be fulfilled. Section 5 of the Punjab Tenancy Act, 1887 is extracted as under:

“5. Tenants having right of occupancy:- (1) A tenant -
(a) who at the commencement of this Act has, for more than two generations in the male line of descent through a grandfather or grand uncle and for a period of not less than twenty years, been occupying land paying no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, or
(b) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he

*ceased to be landowner continuously occupied the land,
or*

*(c) who, in a village or estate in which he settled along
with or was settled by, the founder thereof as a cultivator
therein, occupied land on the twenty-first day of
October, 1868, and has continuously occupied the land
since that date, or*

*(d) who being jagirdar of the estate or any part of the
estate in which the land occupied by him is situate, has
continuosly occupied the land for not less than twenty
years, or, having been such jagirdar, occupied the land
while he was jagirdar and has continuously occupied it
for not less than twenty years, has a right of occupancy
in the land so occupied, unless, in the case of a tenant
belonging to the class specified in clause (c), the
landlord proves that the tenant was settled on land
previously cleared and brought under cultivation by, or
at the expense of, the founder.*

*(2) If a tenant proves that he has continuously occupied
land for thirty years and paid no rent therefor 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 has fulfilled the conditions of clause
(a) of sub-section (1).*

*(3) The words in that clause denoting natural
relationship denotes also relationship by adoption,*

including therein the customary appointment of any heir and relationship, by the usage of a religious community.”

From a reading of the aforesaid statutory provision, it is clear that the appellants are claiming right under Section 5(2) of the Act, however, the plaintiff has failed to fulfill the requirements of Section 5(2) of the Act. A tenant before he files a suit for declaring himself to be an occupancy tenant must establish that he has been in continuous possession for 30 years and paid no rent beyond the amount of the Punjab Land Revenue Act, 1887. In this case, both the Courts have concurrently found that the plaintiff has failed to fulfill both the conditions. The concurrent findings of fact arrived at by the Courts is not shown to be erroneous.

In these circumstanes, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this present appeal is dismissed.

04.10.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No