

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4618 of 2015
Date of Decision:8.11.2017**

Sandeep

...Appellant

Versus

Rajwanti and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sudhanshu Makkar, Advocate for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below. Plaintiffs had filed a suit for declaration, claiming that they are owners in possession of the land with a further relief to direct the revenue authorities to correct/rectify the revenue record in their favour as owners.

Plaintiffs-proforma defendants claimed that Madho Singh and Bhagrawat Singh sons of Sultan Singh were owners in possession of the land in dispute. Aforesaid owners, namely, Madho Singh and Bhagrawat Singh entered into an agreement to create a perpetual tenancy in favour of Lalman son of Shri Mansukh, grandfather of the plaintiffs and proforma defendants. It was claimed that the entire land was given on perpetual tenancy from generation to generation on a nominal rent of Rs.25 per annum.

Plaintiffs claimed that they have become owners of the property as they got occupancy rights under Sections 5 and 8 of the Punjab Tenancy

Act, 1887 (for short 'the 1887 Act'). They claimed that by virtue of Section 2 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, they have become full-fledged owners.

Defendant No.1 filed written statement and submitted that the plaintiffs have put forth false and incorrect facts. Defendant No.1 claimed that Bhagrawat Singh son of Sultan Singh sold this land in dispute to the answering defendant for a sale consideration of Rs.19.60 lacs vide Sale deed dated 6.8.2007 and the defendant has become owner of the property.

After appreciating the evidence available on the file, both the Courts dismissed the suit filed by the plaintiffs.

Learned counsel for the appellant could not point out any substantive error in appreciation of the evidence available on the file, however, he submitted that even if the plaintiffs have not become owner of the property still they can be declared as occupancy tenants in view of the provisions of Section 8 of the 1887 Act.

I have heard learned counsel for the appellant at a considerable length and with his able assistance gone through the record produced by him during the course of arguments.

It is not in dispute that first jamabandi (revenue record) in favour of Lalman, predecessor-in-interest of the plaintiffs, is of the year 1956-57 Ex.P12 on the file, wherein he has been recorded as Gair Marausi tenant. The literal meaning of Gair Marausi is non-occupancy tenant. This entry continues till filing of the suit. In the jamabandis right from 1955-56 till 2001-02 produced on the file, plaintiffs or their predecessors are recorded as Gair Marausi, i.e. non-occupancy tenants. This issue was

examined by this Court in **RSA No.5685 of 2014 decided on 26.10.2017** in detail. It has been held by this Court, while relying upon another judgment passed by this Court in **Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2010 (1) Punjab Law Reporter, 111**, that a tenant recorded in the cultivation column as Gair Marusi (non-occupancy) can never acquire the status and rights of Marusi (Occupancy tenant).

Learned counsel for the appellant has tried to argue that the plaintiff-appellant is claiming to have become owner on the basis of Section 8 of the 1887 Act. Section 8 of the 1887 Act is extracted as under:-

“8. Establishment of right of occupancy on grounds other than those expressly stated in Act- Nothing in the foregoing sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.”

A reading of Section 8 of the 1887 Act would show that apart from what has been provided in Sections 5, 6 and 7, the Court has been empowered to declare a person to be occupancy tenant. However, in the present case, plaintiffs came to the Court claiming that they have entered into an agreement with the land owners to create a perpetual tenancy. However, the plaintiffs failed to produce any evidence in this regard.

Plaintiffs are claiming that since the rate of rent, which is nominal, has remained unchanged and no effort has been made by the land owners to eject them, therefore, plaintiffs should be declared occupancy tenants. Section 9 of the 1887 Act provides that right of occupancy cannot be acquired by mere lapse of time. It is not the case of the appellant that his

case falls in Section 5(2) of the 1887 Act.

Taking into consideration the reasons stated above and concurrent findings of fact arrived at by both the courts below, this Court does not find any ground to interfere with the judgments passed by the courts below.

Accordingly, the present regular second appeal is dismissed.

8.11.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No