

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

RSA No.5685 of 2014 (O&M)

Date of Decision: 26.10.2017

Tara Chand

... Appellant

Versus

Bihari Lal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Akshay Kumar Goel, Advocate
for the respondents.

ANIL KSHETARPAL, J.

This judgement shall dispose of RSA Nos.5685 and 5696 of 2014 as the parties as well as the property in dispute are common.

Tara Chand-plaintiff in Civil Suit No. 243/06 filed a suit for possession with respect to the land measuring 24 Kanals against Bihari Lal and other sons of Nonand. Whereas Bihari Lal and other sons of Nonand filed Civil Suit No. 375 of 2005 claiming declaration that they have become owner of the suit land being occupancy tenants.

Jeewan was original owner of the land. Nonand was the tenant. Nonand filed an application under Section 18 of the Punjab Security of Land Tenure Act, 1953 (for short, the 1953 Act), claiming that he had right to purchase the land being the sitting tenant. The aforesaid application was allowed with respect to the land measuring 32 Bigha as Nonand was found to be old sitting tenant with respect to 32 Bighas of land only. The

application qua 15 Bighas of land comprised in Khasra No.18 was dismissed as Nonand came into possession of the aforesaid land in 1956.

Nonand thereafter filed an application for declaring himself to be occupancy tenant under the Punjab Tenancy Act, 1887 (for short, the 1887 Act) before the Assistant Collector, First Grade. On the other hand, Jeewan, the owner filed an application in form K-1 under Section 9(1)(i) of the 1953 Act, seeking ejectment of Nonand from 15 Bighas of land. The application filed by Nonand was accepted declaring him to be an occupancy tenant, whereas the ejectment petition filed by Jeewan was dismissed. Jeewan filed an appeal and revision, which were dismissed.

Jeewan thereafter filed a Civil Suit challenging the orders passed by the revenue official declaring Nonand as the occupancy tenant. Initially the suit was dismissed. However, the second appeal filed by Jeewan was allowed and it was held that the revenue authorities have no right to declare a tenant to be an occupancy tenant. Nonand could only file suit in the civil Court claiming the relief of declaration that he is an occupancy tenant. That is how the parties are in the civil Court.

Learned trial Court after appreciating the evidence decreed the suit filed by Tara Chand, adopted son of Jeewan and dismissed the suit filed by Bihari Lal and other legal heirs of Nonand refusing to grant declaration to the tenant that he has become an occupancy tenant.

Whereas the first Appellate Court has reversed the judgement of the trial Court while accepting the appeal filed by the legal heirs of Nonand. Resultantly, the suit for possession filed by Tara Chand son of Jeewan has been dismissed, whereas the legal heirs of Nonand have been

declared to be an occupancy tenant and, therefore, owners as per the provisions of the Punjab Tenants (Vesting of Proprietary Rights) Act, 1953.

The following substantial questions of law arise in the present case: –

1. Whether a suit for possession is maintainable against a tenant in the civil Court or not?
2. Whether the judgement of the first Appellate Court declaring the tenant to be an occupancy tenant and, therefore, the owner, is a result of misreading of evidence or not ?
3. Whether a Gair Marusi tenant (non-occupancy tenant) can be declared as an occupancy tenant or not?

1. Whether a suit for possession is maintainable against a tenant in the civil Court or not?

It is not in dispute that Nonand, predecessor-in-interest of Bihari Lal and others was a tenant under the original owner i.e. Jeewan and thereafter, under Tara Chand. Jeewan filed an eviction petition against Nonand. Of course, that eviction petition was dismissed as Nonand was declared as an occupancy tenant. The aforesaid order of declaring Nonand as an occupancy tenant has been set aside. Therefore, the possession of Nonand/his successors continues to be of a tenant. A tenant of agricultural land can only be ejected as per the provisions of the 1887 Act and the 1953 Act. Therefore, the suit for possession at the hands of Tara Chand is not maintainable.

2. Whether the judgement of the first Appellate Court declaring the tenant to be an occupancy tenant and,

therefore, the owner, is a result of misreading of evidence or not ?

The judgment passed by the first Appellate Court is the result of misreading of evidence. The first Appellate Court has held that no eviction proceedings were filed against Nonand or his successors. A reading of the order Ex.D6 on file of Civil Suit No.243/2006 proves that the eviction proceedings were filed by Jeewan and others against Nonand under the provisions of the 1953 Act. The aforesaid eviction proceedings were dismissed vide order dated 31.03.1976.

Further, the first Appellate Court has overlooked that possession of Nonand is Gair Marusi (non-occupancy tenant) in the Jamabandi for the year 1951–52 Ex.P1 on file of Civil Suit No.375/2005. Same is the position in the Jamabandi for the year 1959–60 Ex.P17/A. In this Jamabandi, Nonand has been recorded as a non-occupancy tenant. Further, as per the provisions of Section 5(2) of the 1887 Act, a tenant is required to prove that he has continuously occupied the land for 30 years and paid no rent therefor beyond the amount of land revenue thereof and rates and cesses for the time being chargeable thereon. Nonand or his legal heirs have failed to prove these facts. A look at the revenue record would show that Nonand was liable to pay rent to the landlord for the entire 47 Bighas of land, initially at the rate of Rs.25/- and thereafter at the rate of Rs.47/-. The rate of rent was meagre but it is not proved on the file that it was only equivalent to the land revenue/cesses payable for the aforesaid land. Hence, question No.2 as framed is answered in favour of the

landowners/landlords.

3. Whether a Gair Marusi tenant (non-occupancy tenant) can be declared as an occupancy tenant or not ?

It is proved on the file that Nonand/his successors are recorded as Gair Marusi tenants. The meaning of Gair Marusi is non-occupancy tenant. A non-occupancy tenant cannot claim that he be declared as occupancy tenant.

Sections 5, 6, 7, 8, 9, 10 and 11 of the 1887 Act deal with the rights of occupancy tenant, which are 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 ceased to be land-owner 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 continuously 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 the 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 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).*

(3) *The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship, by the usage of a religious community.*

6. Right of occupancy of, other tenants recorded as having the right before passing of Punjab tenancy Act, 1908 - *A tenant recorded in a record-of-rights sanctioned by the State Government before the twenty-first day of October, 1868, as a tenant having a rights of occupancy in land which he has continuously occupied from the time of the preparation*

of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in the suit instituted before the passing of this Act.

7. Right of occupancy in land taken in exchange - *If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange had not taken place.*

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.*

9. Right of occupancy not to be acquired by mere lapse of time - *No tenant shall acquire a right of occupancy by mere lapse of time.*

10. Right of occupancy not to be acquired by joint owner in land held in joint ownership - *In the absence of a custom to the contrary, no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.*

11. Continuance of existing occupancy rights - *Notwithstanding anything in the foregoing sections of*

this chapter, a tenant, who immediately before the commencement of this Act has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall when this Act comes into force, be held to have, for all, the purposes of this Act, a right of occupancy in that under the enactment specified in the same line of the second column of the table.

PUNJAB TENANCY ACT, 1868 (XXVIII of 1868)		THIS ACT		
FIRST COLUMN		SECOND COLUMN		
Section	Clause	Section	Sub-section	Clause
5	(1)	5	(1)	(a)
5	(2)	5	(1)	(b)
5	(3)	5	(1)	(c)
5	(4)	5	(1)	(d)
6	---	6	---	---
8	---	8	---	---

A reading of Section 9 of 1887 Act would show that the right of occupancy tenant cannot be acquired by a tenant by mere lapse of time. Section 5(2) of the 1887 Act provides that if a tenant proves that he has been in continuous possession of the land for 30 years and paid no rent therefor beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be assumed that he has fulfilled the condition of occupancy tenant. However, for that the tenant is

to specifically plead and prove and meet with both the conditions prescribed under Section 5 (2) of the 1887 Act.

No doubt, Section 8 of the 1887 Act also provides for the establishment of right of occupancy on the grounds other than those expressly stated in the Act. However, it is not the case of the tenant herein.

It has been held by this Court in the judgment reported as *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).

Still further, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 defines occupancy tenant under Section 2(f), which reads as under: –

“2(f) “occupancy tenant” means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy.”

A reading of the aforesaid provision would prove that the vesting of proprietary rights in the occupancy tenant is only limited to the occupancy tenants, who were recorded as occupancy tenants in the revenue

record immediately before the commencement of the Act.

In the present case, Nonand or his legal heirs were recorded as non-occupancy tenants in the revenue record. Hence, question No.3 is answered in favour of the landlords/landowners.

In view of the discussion made above, Civil Suit No.375/2015 is dismissed. The judgment passed by the learned first Appellate Court accepting the appeal, is set aside and that of the trial Court is restored. On the other hand, Civil Suit No.243/2006 is dismissed, leaving the landlords/landowners to seek eviction of the respondents/defendants in Civil Suit No.243/2006, in accordance with the provisions of the Punjab Tenancy Act, 1887 read with the provisions of the Punjab Security of Land Tenure Act, 1953. The judgment passed by the first Appellate Court in RSA No.5685 of 2014 is upheld for different reasons.

(ANIL KSHETARPAL)
JUDGE

26.10.2017
sk

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