

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

RSA-1876-1998 (O & M)
Date of Decision:21.09.2018

Narain Singh and others

...Appellants

Versus

Amar Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Lokesh Sinhal, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendants No.8 to 11 are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Question of law, which requires determination is whether a tenant under the mortgagee can claim to have acquired the status of occupancy tenant and consequently ownership under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 ('1953 Act - for short').

Plaintiffs-respondents herein filed the suit claiming that they are tenants with respect to land measuring 5 kanals 19 marlas + 8 kanals for the last more than 40 years. At the time of inception of the tenancy, there was an agreement that they shall not be evicted as the land was barren and was to be made cultivable by the predecessor of the plaintiffs. Hence, the

plaintiffs claimed that they are in continuous possession for the last 40 years

and, therefore, they have acquired status of occupancy tenants under the provisions of the Punjab Tenancy Act, 1887 ('1887 Act' – for short) and consequently become owner under the 1953 Act.

Defendants No.8 to 11 contested the suit claiming that they are mortgagees. Possession of the plaintiffs was disputed. In alternative, defendants No.8 to 11 pleaded that in case they fail to prove their mortgagee rights then they are in possession as the tenant having superior right to acquire occupancy.

Both the Courts after noticing that possession of the plaintiffs as continuous uninterrupted for more than 40 years, decreed the suit filed by the plaintiffs. Hence, the present appeal.

Relevant provisions of the Punjab Tenancy Act, 1887 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 has a right of occupancy in that lands 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 occupancy as that to which the land given 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.”*

Sections 2(f) and 3 of the 1953 Act are extracted 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.”

“Section 3

Section 3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords – *Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-*

(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector, within six months of the publication of this Act or from the date of his

obtaining occupancy rights whichever id later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of land;

(d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.”

In the present case, as per revenue record, there is two different parcels of land on which the plaintiffs are claiming their right of occupancy. Earlier jamabandi which has come on record is of the year 1950-51 with regard to land measuring 1 bigha and 14 biswas. Plaintiffs are nowhere in picture and predecessor-in-interest of the defendants are shown to be in possession. With regard to second set of land, the predecessor of defendants No.8 to 11-appellants are recorded as mortgagees in possession. Predecessor-in-interest of the plaintiffs namely Devi Ram is recorded as tenant under predecessor-in-interest of defendants No.8 to 11-appellants. The words used are "*gair marusi Doyam*" which literally means that Devi Ram, predecessor-in-interest of the plaintiffs-respondents was sub-tenant under predecessor-in-interest of defendants No.8 to 11-appellants. Other jamabandi on the record is of 1957-58, which also records that predecessor-

in-interest of the plaintiffs-respondents was sub-tenant under the mortgagees i.e. predecessor-in-interest of the appellants.

Still further, this entry is continuing and substantiated from jamabandi of the year 1982-83 with regard to both parcels of land. This is the entire documentary evidence, which has been placed on file.

Learned Courts below have just declared the respondents-plaintiffs to be the owner on the ground that they are in continuous possession for the last 40 years. Section 9 of the Punjab Tenancy Act, 1887 clearly provides that mere lapse of time would not be a ground for a tenant to acquire a right of occupancy. Under each provision, different sets of situations have been provided through which a tenant can acquire right of occupancy. No right has been conferred on tenants of the mortgagees or sub-tenants.

Still further, once a right of ownership is to be divested and conferred on someone, the provisions of the Act have to be strictly construed. Literal meaning of '*gair marusi*' is non occupancy tenant. This issue has been dealt with by the Court in the judgment reported as (2018-2) 190 **"Ram Kishan and others vs. Jagdish and others"**.

In another case, this Court while dealing with rights of occupancy under Section 8 of the Punjab Tenancy Act, 1887 discussed the provisions of Act in detail and held that '*gair marusi*' cannot claim the right of occupancy. Reference in this regard can be made to judgment in RSA-5057-2016 decided on 08.01.2018.

For the reasons stated in the aforesaid judgments, the plaintiffs have failed to prove right of occupancy. Even otherwise, the plaintiffs

being sub-tenants have no right to get themselves declared as occupancy tenant and consequently owner. Hence, question framed is answered in favour of the appellants.

Appeal is allowed. Judgment passed by the Courts below are set aside. Suit filed by the plaintiffs is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

21.09.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No