

In the High Court of Punjab and Haryana at Chandigarh

RSA-3333 of 2012(O&M)

Date of Decision:22.5.2018

Sukh Ram and others

---Appellants

vs.

Rajesh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vinod S.Bhardwaj, Advocate
for the appellants

Mr. Sudhanshu Makkar, Advocate
for respondent No. 1

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 14.6.2012 passed by the Additional District Judge, Bhiwani whereby appeal preferred by Rajesh and others against the judgment and decree dated 7.8.2009 passed by the Additional Civil Judge (Senior Division), Loharu (hereinafter to be referred as “the trial court”) has been allowed, judgment and decree of the trial court have been set aside and suit filed by the appellants/plaintiffs claiming themselves to be owner in possession in equal share of suit land, detailed in head note of the plaint, as per jamabandi for the year 2000-2001 on the basis of occupancy rights, has been dismissed.

As per case set up by the appellants/plaintiffs, suit land was owned by ancestors of the defendants/respondents. The suit land was given to ancestors of the appellants/plaintiffs on tenancy by ancestors of the defendants for the purpose of cultivation and nominal rent @ Rs. 24/- per year was agreed. It was also agreed between the parties that ancestors of the defendants will not eject ancestors of the plaintiffs from the suit land. Land was made cultivable by

spending huge amount. Previously, ancestors of the plaintiffs were in cultivating possession and now the plaintiffs are in cultivating possession of the suit land in the capacity of *gair marusi* tenant on payment of nominal rent without any interruption. They have perfected their rights of occupancy and have become owners of suit land as per Occupancy Tenant (Vesting of Proprietary Rights) Act, 1953 (in short “the 1953 Act”). The names of defendants have wrongly been continuing in the revenue record in the column of ownership and entries in the revenue record are liable to be corrected in the name of appellants/plaintiffs.

Defendants No. 4 and 5 namely Ramphal and Rejesh filed the written statement taking preliminary objections with regard to maintainability of the suit, locus standi and cause of action. It has been averred that the plaintiffs and proforma defendant never cultivated the suit land. Land measuring 6 kanal 12 marlas was purchased by the defendants from original owners. The revenue entries showing possession of ancestors of the plaintiffs are wrong and father of the plaintiffs died ten years ago. The plaintiffs do not fulfill conditions of Sections 5 and 8 of the 1953 Act.

Separate written statement was filed by defendant No. 20 alongwith counter claim with the plea that suit has been filed for depriving the answering defendant from his legal rights. He is legal heir of Durjan son of Dhanna. His father had been in cultivating possession of the suit land as *gair marusi* tenant @ Rs. 24/- per year. By way of counter claim, he claimed his right according to his share in the suit land.

Reply to counter claim and replications were filed.

The trial court framed issues, detailed in para 5 of the judgment of said court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court accepted plea of the appellant-plaintiffs. Plaintiffs and counter claimant are declared to be owners in possession of suit

land in equal share and they being entitled to be recorded as such in the revenue record in the column of ownership.

As has been noticed hereinbefore, appeal preferred by Rajesh and others, defendants No. 4, 5, 11 and 12 was allowed by the Court in Appeal and suit filed by the appellants/plaintiffs claiming ownership of suit land on the basis of occupancy rights has been dismissed.

Counsel for the appellants has submitted that the trial court decreed suit of the appellants against defendants No. 1 to 19 namely Sheo Parshad and others but the appeal was preferred by Rajesh and others, defendants No. 4, 5, 11 and 12, therefore, the Court in Appeal has gravely erred and committed an illegality by setting aside judgment of the trial court in whole. It is argued with vehemence that even if the Court in Appeal has arrived at a conclusion that the appellants have not become owners by way of occupancy tenants, the judgment and decree passed by the trial court could only be set aside to the extent of co-ownership of the appellants in the suit land.

Another submission made by counsel is that the suit land was initially given to predecessors-in-interest of the appellants at *chakota saal tamam* @ Rs. 24/- per year. It is further argued that nothing has been recorded in the jamabandis as to on what basis, there was change in entries in column No. 9 pertaining to payment of rent etc., therefore, entries in the subsequent jamabandis regarding *batai tehai* etc. cannot be taken into consideration to disadvantage of the appellants to say that they were paying rent more than the land revenue and cess payable on the land in question. The last submission made by counsel is that since predecessors-in-interest of the appellants/plaintiffs have been continuously recorded to be tenants in the suit land since the year 1944/1945, the appellants acquired ownership right in suit land as they satisfy the requirements of Section 5 of the Punjab Tenancy Act, 1987.

Counsel representing the respondents has supported the judgment

passed by the Court in Appeal with the submission that as interest of defendants was common and they proceeded on a ground which was common to the appellants before the first appellate court as well as other defendants, contention raised by counsel for the appellants that the Court in Appeal could not set aside the judgment and decree as a whole is misconceived. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Mahabir Prasad vs. Jage Ram and others AIR 1971 (SC) 742** and **Chandramohan Ramchandra Patil and others vs. Bapu Koyoppa Patil (dead) through Lrs. and others AIR 2003 (SC) 1754**.

To refute contention of the appellants with regard to their having become owners being occupancy tenants, it is argued that as the appellants have relied upon entries in jamabandis, they cannot be allowed to find fault therein recording payment of batai/tehai etc. It is argued with vehemence that as the appellants never challenged correctness of entries in the jamabandis recording payment of batai/tehai etc., therefore, it is not open for them now to wriggle out of the same.

I have heard counsel for the parties, perused the paper book particularly the judgments passed by the courts.

The legal submission made by counsel for the appellants that as the appeal has been preferred only by four defendants out of 19 against whom decree was passed by the trial court, therefore, the entire decree could not be set aside by the Court in Appeal, is patently misconceived and liable to be rejected. Order 41 Rule 4 of the Code of Civil Procedure (in short "the Code") runs contrary to what has been sought to be argued. A relevant extract therefrom, reads as follows:-

“One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.- Where there are more plaintiffs or more defendants than one in a suit, and the decree

appealed from proceed on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.”

Hon'ble the Supreme Court in **Mahabir Prasad's case (supra)** while dealing with the provisions of Order 41 Rule 4 of the Code has held that the aforesaid provisions invests the appellate court with power to reverse or vary the decree in favour of all the plaintiffs or defendants even though they had not joined in the appeal if the decree proceeds upon a ground common to all the plaintiffs or defendants.

Counsel for the appellants has not made any submissions as to how and why the provisions of Order 41 Rule 4 of the Code cannot be made applicable in the given scenario. In this view of the matter, contention raised by the appellants is devoid of merit, thus, untenable.

This brings the court to submissions qua merits of the case. Counsel for the appellants has not disputed that in case entries made in the jamabandis marked as exhibits and detailed in para 14 of judgment of the appellate court are taken into consideration, the appellants can still claim themselves to be owners being occupancy tenants or they were paying rent less than the land revenue and cesses for the time being chargeable on the suit land.

Section 5 of the Punjab Tenancy Act, 1887 deals with right of occupancy tenants. Section 5(2), germane to the controversy, reads thus:-

“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 rate of cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-Section (1).

The Court in Appeal has given details of entries in the jamabandis starting from the year 1944-45. In the year 1944-45, *chakota saal tamam* was Rs. 24/- per year. It is difficult to accept that even at the stage of inception of tenancy, rent payable by predecessors-in-interest of the appellants was not beyond the amount of land revenue and cesses chargeable on the land in question. In jamabandis for the years 1985-86, 1990-91, 1995-96 and 2000-2001 Exs. P4, P3, P2 and P1 respectively, it has been recorded as *bashra kabja malkan*. In jamabandi for the year 1961-62 (Ex. P8) *batai tehai* has been recorded. In jamabandi for the year 1980-81 (Ex. P5) *kabja malkan bashra* has been recorded and in column No. 5, self cultivation of owners has been reflected. Taking a view from the entries in the jamabandis relied upon by the appellants coupled with that they have not adduced any evidence that rent paid by them was not more than the amount of land revenue and cess payable on the land in question, the appellants have failed to establish that they have satisfied the pre-requisites of Section 5(2) of the Punjab Tenancy Act to claim themselves to be owners on the basis of possession since 1944-45. Howsoever long the possession may be, but in order to claim rights of ownership on the basis of occupancy tenancy, the plaintiffs have to satisfy the requirements of Section 5 of the Punjab Tenancy Act. In this view of the matter, I do not find an error much less illegality in the conclusion drawn by the Court in Appeal negating plea of the appellants that they have become owners of the suit land.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

22.5.2018

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No