

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

RSA No.1707 of 2013 (O&M)

Date of Decision:16.10.2018

The Mandi Adampur Co-operative Society Ltd. Mandi Adampur, District
Hisar through its Manager

...Appellant

Versus

Mohar Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Singla, Advocate for the appellant.
Mr.Vijay S. Kajla, Advocate for the respondents.

ANIL KSHETARPAL, J.

Through this judgment, seven Regular Second Appeals bearing RSA Nos.1707 to 1710 of 2013 and 1761 to 1763 of 2013 shall stand decided as the issue which needs determination is common. Learned counsels for the parties are also in agreement that all these appeals can be conveniently disposed of by a common judgment.

The question which needs determination is whether the plaintiffs-respondents have become occupancy tenants and consequently owners, in terms of the provisions of the Punjab Tenancy Act, 1887 (for short 'the Act of 1887') and Punjab Tenants (Vesting of Proprietary Rights) Act, 1952 (for short 'the Act of 1952').

It would be appropriate to notice facts in each case.

Facts

In all these cases, the respondents-plaintiffs have filed separate suits for declaration to the effect that since they have acquired occupancy

rights in respect of agriculture land in their possession, they have become owners under the Act of 1952.

In RSA No.1707 of 2013, the plaintiffs-respondents filed a suit for declaration that they have acquired occupancy rights in respect of land measuring 19 kanals and 7 marlas situated in Village Kaliravan, Tehsil Adampur, District Hisar. In fact in all these cases, the difference is only with regard to quantum of the land. In RSA No.1708 of 2013, the land is 8 kanals, whereas in RSA No.1709 of 2013, the land is 18 kanals and 9 marlas. In RSA No.1710 of 2013 the land is 17 kanals and 12 marlas, in RSA No.1761 of 2013 land is 61 kanals and 6 marlas, in RSA No.1762 of 2013 land is 16 kanals and in RSA No.1763 of 2013 the land is 13 kanals and 10 marlas. In all these cases, the plaintiffs-respondents have pleaded that they are cultivating the suit land since the time of their ancestors for the last more than 100 years as tenants on payment of nominal rent as 'Gair Marusi'. It has further been pleaded that the original owner Ranjit Singh son of Beg Raj had orally promised not to evict the plaintiffs ever from the suit land.

The appellant-defendant purchased the property in an open auction. An arbitration award was passed in favour of the defendant-appellant. Execution application was filed in order to execute the award passed by the Court of Sh.V.K.Kaushal, Senior Sub Judge, Hisar on 17.3.1970 and in pursuant thereto, in court auction, the property was purchased. Sale certificate was issued in favour of the appellant-Society on 13.2.1973 and land was transferred in favour of the appellant-Society on 28.8.1974. The appellant-society filed an application for seeking eviction of the plaintiff-respondent as per the provisions of the Punjab Security of

Land Tenures Act, 1953, which was decided ex parte and appeal against the same is pending before the Court. The plaintiffs in each suit claim that they have become owners as per the provisions of the Act of 1952. At this stage, it will be noted that the pleading in the plaint in each suit is similar. For the facility of reference, the pleadings are extracted as under:-

“2 That when the fore fathers of the plaintiffs were inducted as tenant by owners of the land, on the disputed land detailed in the head note of the plaint, the land was unfit for cultivation and on the promise of the owners of the land that they make the land cultivable and pay only nominal rent, they and their successors in interest shall never be ejected from the suit land, they started cultivating the suit land;

3 That on the oral promise between the forefathers of plaintiffs and previous owner/predecessors in interest of the defendant, the forefathers of the plaintiffs after putting hard labour and spending huge amount made the land cultivable and have been paying nominal rent and are cultivating the land continuously. They have never been ejected from any court nor they have surrendered the possession to the defendant or to any one. Prior to the defendant society, the owner of the disputed land was Ranjit S/o Beg Raj.

4. That under the above circumstances the plaintiffs have become entitled to acquire the occupancy rights in respect to the suit land under the provisions of Section 5(1)(a) read with 5(2) and section 8 of Punjab Tenants Act 1887 (as amended upto date) and have become owners of it under the provisions of section 3 of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 and as such are entitled to be recorded as owners in revenue records. As per provisions of section 3(a) of Punjab Occupancy Tenants Act 1952 all rights, title and interest 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.

5. *That the plaintiffs and their father/ancestor have been cultivating the suit land continuously for the last more than 100 years as tenant on nominal rent. Plaintiffs father namely Udmi son of Ganga Ram has died on 11.5.06. The entries in the name of defendant as owner in the revenue records in respect of suit land are wrong and the same are liable to be ignored.”*

In order to prove their case, the plaintiffs have produced on file revenue record from the year 1962-63 to prove their possession. The rate of land revenue as per entry in column No.9 of the jamabandi is @Rs.1.59 per acre per year. Status of the plaintiffs in first two jamabandis for the years 1962-63 and 1964-65 is not 'Gair Marusi', whereas all subsequent jamabandis depict the status of the plaintiffs as Gair Marusi.

Both the courts below on appreciation of evidence have decreed the suit after recording a finding that since possession of the plaintiffs is continuing for more than 30 years, therefore, as per the provisions of Section 5(2) of the Act of 1887, the plaintiffs are entitled to be declared as occupancy tenants and therefore, have become owners. The relevant provisions of the Sections 5, 6, 7, 8, 9, 10 and 11 of the Act of 1887 which deal with the rights of occupancy tenant as well as the provisions of the Act of 1952 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.*

Act of 1952

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	---	---

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 of the Act of 1952 is extracted as under:-

“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 is 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 the 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.”*

On careful perusal of Section 5(2) of the Act of 1887 as extracted above, it is apparent that the tenant is required to fulfill twin

conditions before he can be declared occupancy tenant, i.e. (i) the tenant continuously occupies the land for more than 30 years and (ii) paid no rent thereof beyond the amount of land revenue and the rates and cesses for the time being chargeable thereon.

A bare look at the pleadings of the plaintiffs in the plaint, it is apparent that the plaintiffs have pleaded that they have been paying nominal rent. The entire case of the plaintiffs in each case is that they have made land cultivable and paid nominal rent. Once the plaintiffs are seeking declaration that they should be declared to have become occupancy tenants and consequently owners, in accordance with Section 5(2) of the Act of 1887 read with the provisions of the Act of 1952, they have to fulfill two conditions as prescribed in the aforesaid provisions.

Firstly plaintiffs have to prove that they are in possession as tenants who have continuously occupied the land for 30 years and paid no rent thereof beyond the amount of land revenue thereof and the rates and the cesses for the time being chargeable thereon. Hence the basic fundamental requirement of Section 5(2) or any other provision of the Punjab Tenancy Act dealing with occupancy tenants is that the person claiming has to first establish that he is a tenant and then he has acquired the status of occupancy tenant. When one carefully examines the evidence produced, the plaintiffs have produced jamabandi for the year 1962-63 which records their father Udmi to be in possession of the property and the land revenue is Rs.1.59/- per acre 'Khar Pari'. Udmi is not even recorded as gair marusi. There is no entry of payment of rent in column No.9 to the land owners. Next jamabandi Ex.P9 is for the year 1964-65, wherein again predecessor of the plaintiffs, is recorded in possession and in column No.9, rate of land

revenue is 1.59/- per acre per year. It will be noted that out of total land 7 kanals and 7 marlas of land is under a pond. Next jamabandi produced by the plaintiffs is Ex.P8 for the year 1969-70, wherein first time predecessor of the plaintiff is recorded in possession as gair marusi and in column No.9 the entry of land revenue continues to be same. This entry continues in the year 1974-75, 1979-80, 1984-85, 1989-90, 1994-95, 1999-2000 and 2004-05. When one of the plaintiff Jagdish appeared in evidence, he admitted that he does not have any evidence of payment of rent to either the erstwhile land owner or the Society. Although, the plaintiffs have taken a stand that they have been paying rent to the appellant-Society against receipt but when further questioned, he admitted that he is neither in possession of any agreement nor in possession of any receipt either from the erstwhile owner or from the Society. He has gone into state that he has heard from his ancestors that his ancestors were inducted as tenants by Ranjit, the erstwhile owner. This is entire evidence produced by the plaintiffs to prove their case.

'Gair Marusi' itself is not conclusive to record a finding that a person is tenant. The entry of gair marusi has to be read with entry in column No.9 to determine whether possession is as a tenant or not. It is well settled that the relationship of landlord and the tenant can only be brought into by a contract between the parties. Such contract can be in writing or oral with respect to agriculture land. In the present case, it is admitted by Jagdish Kumar that there is no agreement between erstwhile owner Ranjit and their ancestors. Now this court is left with only oral evidence and the revenue record.

On careful perusal of the revenue record, it is not established

that the plaintiffs or their predecessors were tenants over the land. No doubt, they have been recorded in possession. Jamabandis for the 1962-63 and 1964-64 did not even record the predecessor of the plaintiffs as 'Gair Marusi'. In fact, the revenue authorities started referring to the person as gair marusi because the authorities were not certain as to what is the status of the person in possession, hence word gair marusi itself cannot determine the status of the person in possession as tenant. Entry in column no.9 does not support the case of the plaintiffs. The rent cannot be @ Rs.1.59 per acre per year. It is not possible to believe that lease money of Rs.1.59/- was agreed to for one acre of land which consist of 8 kanals. Still further, column No.9 refers to land revenue and not the rent.

No doubt, the Society filed eviction proceedings against the plaintiffs which are pending but that itself cannot taken as a ground to hold that the plaintiffs were also the tenants over the land under Ranjit, the erstwhile owner. Still further, the appellant-society purchased the property in an open auction in the year 1970. The suit was filed in 2007 that is after a period of 37 years not even a single receipt of payment of rent has been produced rather this fact is admitted by one of the plaintiff who has appeared in evidence.

Once there is no conclusive evidence to hold that the plaintiffs are tenant, their entire claim based upon tenancy fail.

In the considered view of this Court, such pleadings and proof are mandatory before declaratory decree can be granted in favour of the plaintiffs. Still further, the literal meaning of word 'Gair Marusi' is "non occupancy". On the aforesaid issue, this Court in **RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others)** decided on 26.10.2017, after

discussing various judgments of the Court, has held that a Gair Marusi tenant can never acquire the status and rights of marusi (occupancy tenant).

In view of the above, all these seven appeals are allowed. The judgments and decrees passed by the courts below are set aside. Pending application(s), if any, shall also stand disposed of, in terms thereof.

16.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No