

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

RSA No.241 of 2013

Date of Decision.28.02.2018

Om Parkash and another

.....Appellant

Vs

Shamlat Panna Mundhara Hasab Rasab Raqba and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.K. Rohilla, Advocate
for the appellants.

Respondents already proceeded ex parte.

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AMIT RAWAL J.(ORAL)

In pursuance of the order dated 19.02.2018 passed by this Court, costs of ₹2500/- has been paid.

The present appeal is preferred at the instance of the legal representatives of Nanda @ Nandu, who had not been successful in the suit seeking declaration with permanent injunction of having acquired the ownership as occupancy tenants as per the provisions of Section 5 of the Punjab Tenancy Act, 1987. The suit aforementioned was filed on the premise that the plaintiffs had been in continuous possession comprised in Khewat No.158/141 min, Khatoni No.271, 272, Rec. & Killa No.270/17(8-0) total measuring 8 kanals 0 marla to the extent of half share i.e. 4 kanals since the last more than 60 years as per the jamabandies, which had been referred on record as Ex.P1 to P-10 commencing from the year 1961-62 to 2000-2001.

The aforementioned suit was not contested by the defendants as they did not appear and proceeded ex parte. The trial Court dismissed the suit on the premise that the plaintiffs had not been able to prove the

ingredients of sub-section 2 of Section 5 of the Punjab Tenancy Act. The appeal preferred against the aforementioned judgment and decree of the trial Court also met with the same fate.

Mr. Rohilla, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court did not even advert to the aforementioned documentary evidence while assigning the reasoning and had misdirected itself while deciding the appeal. In fact, it had extracted all the reasonings given by the trial Court which is not the scope of the provisions of Section 96 of the Code of Civil Procedure. In support of his contention, he referred to the provisions of Section 5 of the Punjab Tenancy Act, 1987. He submits that as per sub-section 2 of Section 5, if a person in possession for more than 30 years can claim occupancy rights as tenant. The jamabandis aforementioned showed that they were in possession from 1961 onwards. It is not necessary that the rent had to be paid as the language is “no rent therefore beyond the amount of the land-revenue thereof,” thus, there is misdirection and misreading of the aforementioned provisions.

I have heard learned counsel for the appellants and appraised the paper book. A perusal of jamabandies Ex.P1 to P10 and P11 showed that Nanda, predecessor-in-interest, had been in possession for the last more than 30 years. Prima facie, the appellants appeared to have complied with the provisions of Section 5 (2) of the Punjab Tenancy Act but it was duty of the Court to discharge the obligation but having failed to do so, I am of the view that the matter is required to be revisited. Resultantly, the judgment and decree under challenge is not sustainable in the eyes of law and the same is hereby set aside. The matter is remitted to the lower Appellate

Court for deciding the appeal, afresh, by referring all the documentary and oral evidence by assigning reasons in accordance with law within a period of five months.

The second appeal stands allowed in the aforementioned terms.

The parties shall appear before the lower Appellate Court on 28.03.2018

(AMIT RAWAL)
JUDGE

February 28, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No