

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

RSA No. 3588 of 2013 (O&M)

Date of decision:30.10.2018

Manju Devi

..... Appellant.

Versus

Fateh Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.S.P.Chahar, Advocate
for the applicant-appellant.

Mr. Balraj Gujjar, Advocate
for respondents no.1 to 7.

LISA GILL,J.

CM-15476-C of 2018.

For the reasons mentioned in the application as well as arguments addressed, order dated 18.09.2018 vide which the appeal was dismissed in default is recalled. Appeal is restored at its original number.

Application is disposed of

With the consent of learned counsel for the parties, appeal is taken up for hearing today itself.

R.S.A No. 3588 of 2013.

Appellant-defendant is aggrieved of judgment and decree dated 21.07.2010, passed by the learned Civil Judge (Jr. Division), Bhiwani, as well as judgment and decree dated 10.09.2012, passed by the learned Additional District Judge, Bhiwani, whereby the suit filed by the respondent-plaintiffs has been decreed.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondents no.1 to 7 (respondent no.2 through his legal representatives) filed a suit for a declaration to the effect that they have become owners in possession of the suit property measuring 22 Kanal 3 Marlas as described in the plaint. Plaintiff-respondents no.1 and 2 claimed to be owners to the extent of 2/ 3rd share in equal shares and plaintiff-respondents no.3 to 7 to the extent of 1/ 3rd share by virtue of Sections 2(a), 2(f), 3 of the Punjab Occupancy Tenants (Vesting of Occupancy Tenants Act) 1952 (for short 'Occupancy Act') and Sections 5 and 8 of the Punjab Tenancy Act, 1887 (for short 'Tenancy Act'). Consequential relief of permanent injunction against the defendant-landlord was sought besides seeking restraining of the landlord from interfering in their peaceful possession. It was pleaded that the plaintiffs were residents of Village Sagwan, Tehsil Tosham, District Bhiwani. The suit property was earlier not cultivable. It was given to the predecessor-in-interest of the plaintiffs on the condition that they shall make the land cultivable and continue to cultivate the same on payment of nominal rent with an assurance that they would not be evicted from the suit property. Predecessor-in-interest of the plaintiff made the suit land cultivable after incurring expenses thereon. It was pleaded that the plaintiffs and their predecessors-in-interest had been cultivating the suit property for over 100 years on payment of nominal rent i.e. ₹10.12/- ps. (Saal Tamam Baar Khari Pari). Panthi son of Chatru, father of plaintiffs no.3 to 7 died and the suit land to the extent of 1/ 3rd share was claimed to be under the cultivating possession of respondents no.3 to 7 and the remaining 2 / 3rd

share was stated to be cultivated by plaintiffs no.1 and 2.

The owners of the land namely Beer Chand and others sold the suit land in favour of the defendant-appellant vide a registered sale deed dated 19.10.2006. Plaintiffs thus claimed to have become owners of the suit property and thus entitled for incorporation of their names in the column of ownership in the revenue record. Hence the suit was filed.

Defendant-appellant contested the suit. Various preliminary objections were raised in the written statement. Averments on merits were controverted. It was averred that the plaintiffs were in-fact cultivating the suit land on 'Batai Tihai' (3rd share of produce). The land was stated to be cultivable right from very beginning. It was denied that the predecessors-in-interest of the plaintiffs had made the land cultivable at their own expenses or that there was ever any assurance that the plaintiffs would not be evicted from the suit property. Entry in the revenue record showing the rate of rent was denied being incorrect. It was specifically denied that the plaintiffs had acquired any right etc., by virtue of the Occupancy Act or the Tenancy Act. Dismissal of the suit was prayed.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the respondents have become owners in possession of the property in dispute on the grounds as alleged in the plaint?OPP.
2. Whether the suit of the plaintiff is not maintainable in its present form?OPP
3. Whether the respondents have no locus standi to file the present suit?OPD
4. Whether the civil Court has no jurisdiction to try and decide the present suit?OPD
5. Whether the suit of plaintiff is time barred?OPD
6. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that the plaintiffs successfully established their possession over the land for the last more than 30 years in the manner as claimed in the plaint. They had not paid any rent beyond the amount of land revenue thereof besides the rates and cesses for the time being chargeable. Therefore, the suit was decreed in their favour.

Appeal preferred by the appellant-defendant was dismissed by the learned Additional District Judge, Bhiwani, with the modification that the plaintiffs were entitled to a decree in respect of 41/42 share of the land measuring 22 Kanal 3 Marlas as they had not impleaded one Maman Chand or his legal heirs as a party to the suit. Maman Chand was proved to be having 1/42 share in the property in dispute measuring 22 Kanal 3 Marlas.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Learned counsel for the appellant argues that both the learned Courts below have grossly erred in decreeing the suit filed by the plaintiff-respondents. It is submitted that the respondent-plaintiffs failed to prove that there was any agreement between them and the previous land owners that they shall not be evicted from the land in dispute. No specific record has been produced to show that the name of the predecessors-in-interest of the respondent-plaintiffs was reflected as tenant in the revenue record. Moreover, the plaintiffs failed to prove that

they had not paid rent beyond the amount of land revenue or the nominal rent. Maman Chand was owner of 1/42 share of the land in dispute. However, he was not impleaded as a party to the suit. Therefore, the suit filed by the plaintiff-respondents should have been dismissed in toto. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside and the suit filed by the plaintiff-respondents be dismissed throughout.

Learned counsel for the respondent-plaintiffs refuted the arguments raised on behalf of the appellant while submitting that the suit of the plaintiff has been rightly decreed by the learned trial Court. It is informed that no appeal has been preferred by the respondent-plaintiffs qua the modification ordered by the learned Additional District Judge, Bhiwani, vide judgement and decree dated 10.09.2012. Learned counsel for the plaintiff-respondents prays for upholding of the impugned judgements and decrees passed by the learned Courts below.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It would be useful to refer to the provisions of Section 5 and Section 8 of the Tenancy Act, which reads 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 landowner 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
Omitted by the India (Adaptation of Existing Indian Laws) order, 1947, section 4 (1). Provisions about Mrqarridars had been added by Punjab Alt 11 of 1925.

(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.

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.”

Plaintiff-respondents set up a specific case that they/their predecessors-in-interest i.e. Panthi, Fateh Singh and Chhotu sons of Chatru son of Shri Heta, were cultivating the property under the original owners of on payment of nominal rent i.e. ₹.10.12 ps. (Saal Tamam Bar Khari Pari). Copies of the jamabandies Ex.P-1 to Ex.P-7 from the year 1972-73 to 2002-03 reflect the name of Panthi, Fateh Singh and Chhotu in the column of cultivation. No enhancement of rent is reflected in the said documents, to which a presumption of truth is attached. After the death of Panthi, his sons i.e. respondents no. 3 to 7 along with Fateh Singh and Chhotu are proved to be cultivating the land in question. Moreover, there is nothing on record to show that any petition for eviction of Panthi, Fateh Singh or Chhotu was ever filed by the land owners. Rate of rent was never enhanced. It is thus correctly held by both the learned Courts below that the implied condition of not evicting the said tenants from the property in dispute by the land owners, was evident on the face of it. Land in question was sold by the original owners except Maman Chand to appellant-defendant vide a registered sale deed Ex.P-8. It was claimed by the appellant that the respondents and their predecessors-in-interest were tenants on 'Batai Tihai' (3rd share of produce), but there is no evidence on record to indicate the same.

In this view of the matter, suit of the plaintiffs has been rightly decreed. Learned Additional District Judge, Bhiwani, has correctly modified the decree passed by the learned trial Court to the

effect that the plaintiff-respondents are entitled to 41/42 share of the land measuring 22 Kanal 3 Marlas because Maman Chand or his legal heirs who has 1/42 share in the property in question, were not impleaded as party to the suit. The said fact cannot be a ground to dismiss the suit of the respondent-plaintiffs in toto as urged by learned counsel for the appellant. This argument being devoid of any merit is also rejected.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 21.07.2010 and 10.09.2012 passed by the learned Civil Judge (Jr. Division) Bhiwani and learned Additional District Judge, Bhiwani, respectively, are upheld.

There is a delay of one hundred and eighty six (186) days in re-filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

30.10.2018

s.khan

**(LISA GILL)
JUDGE**

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