

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

RSA No.1336 of 2016 (O&M)

Date of Decision:27.07.2018

Mohar Pal and others

...Appellants

Versus

Daan Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Nipun Vashist, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, dismissing the suit filed by the plaintiffs, seeking declaration to the effect that they have become owners in possession of the land, in view of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

It is not disputed that the plaintiffs are recorded as 'Gair Marusi'. The literal meaning of 'Gair Marusi' is 'non-occupancy'. This Court, while deciding RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others), decided on 26.10.2017, while discussing all the provisions of the Punjab Tenancy Act, 1887 and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, have held that a tenant, who is recorded in the revenue record as 'Gair Marusi', cannot claim that he has become occupancy tenant from non-occupancy and has consequently acquired the right of ownership.

Still further, the courts below have examined the evidence produced on file in the context of case set up by the plaintiffs. It has been

noticed that the tenant is required to prove that he has not paid any rent beyond the amount of land revenue thereof the rates and cesses. However, on examination of the revenue record from 1964-65 onwards, courts have found that the plaintiffs have been paying the rent @Rs.4.50. Moreover, when PW-3 in cross-examination admitted that he has been giving the amount of lease money to the land owners since beginning. No evidence has been produced to prove that the land revenue payable was equivalent to the amount of rent.

Learned counsel for the appellants has submitted that the amount of rent is very meager and since the plaintiffs have not been evicted for number of years, therefore, the plaintiffs should be declared occupancy tenant and consequently owner of the property. The plaintiffs are praying for divesting of title from the owners. It is for the plaintiffs to prove that they fulfill the requirement of Section 5 of the Punjab Tenancy Act, 1887. The evidence produced by the plaintiffs does not satisfy the statutory requirements before it can be declared that they have acquired the status of the occupancy tenant and therefore become owners.

In view of the above discussion, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

27.07.2018
mks

(ANIL KSHETARPAL)
JUDGE

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