

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

RSA No.4456 of 2016 (O&M)

Date of Decision: 17.09.2018

Balbir son of Sh. Budh Ram (now deceased) through his LRs

... Appellant(s)

Versus

Municipal Corporation, Faridabad and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Rahul Sharma-I, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA, J.

Plaintiff Balbir Singh (deceased) through legal heirs
instituted a suit raising precisely the following prayer:-

“A decree of declaration in favour of the plaintiff and
against the defendants to the effect that the plaintiff is having
acquired occupancy rights in respect of suit land mentioned in
para No.1 of the plaint under Section 5 of Punjab Tenancy Act and
as well as by way of adverse possession has become absolute
owner and in possession of the suit land, with all rights, title and
interest appurtenant thereto, by virtue of Section 3 of Punjab
Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and
the plaintiff be declared as owner of the suit land to the extent of
his respective share, thereby deleting the name of the defendants
from the column of ownership and incorporating the name of the
plaintiff in the said column in the revenue records”.

Suit was dismissed by the trial Court on 25.08.2015 and

a Civil Appeal preferred has also met the same fate vide impugned judgment dated 08.04.2016 passed by the Learned Additional District Judge, Faridabad.

Resultantly, plaintiffs/appellant(s) are in second appeal before this Court.

Counsel for the appellants has been heard at length and the pleadings on record have been perused. Section 5 of the Punjab Tenancy Act would be relevant to the issue at hand and reads in the following terms:

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

(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.”

Upon due appreciation of evidence, the following finding of fact has been recorded by the trial Court against the appellant:-

“So, as such, from the documents placed on record before the Court by plaintiff himself, it is established on record that first mention of possession of Balbir over the suit property has appeared in the jamabandi for the year 1986-1987. As such, the present suit was

filed on 08.06.2011. Further, only person in the male lines of decent, who remained in possession is Balbir and in such circumstances, 30 years of occupancy was to be proved, but 30 years have not lapsed since 1986-1987. Further, there is nothing on record to show that any one in the male line of ascent of Balbir has remained in possession of the suit property and in such circumstances, there is no question of acquiring of occupancy rights by the plaintiff in the suit property through his father. As such, basic requirement of Section 5 of Punjab Tenancy Act is not fulfilled. In such circumstances, there is no question of declaring that plaintiff has acquired ownership over the suit property by way of acquiring occupancy rights.”

Such findings stand affirmed by the Lower Appellate Court.

Learned counsel representing the appellants is not in a position to point out any perversity or infirmity in the concurrent view taken by the Courts below as regards requirement of Section 5 of the Punjab Tenancy Act having not been satisfied by the appellants.

That apart the appellant on the one hand was claiming “Gair Marusi” tenant over the suit property and on the other hand was claiming ownership by way of adverse possession. The plea of adverse possession and of permissive possession are mutually destructive pleas.

No interference in the matter is called for.

The appeal sans merit and is dismissed.

17.09.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No