

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

**RSA No.5057 of 2016
Date of Decision:08.01.2018**

Parbhat and others

...Appellants

Versus

Surender Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Arun Jain, Sr. Advocate with
Mr.Varun Parkash, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, appeals bearing RSA Nos.3367, 3374 to 3382, 3581 to 3583, 4901, 5095 and 5097 of 2016 shall stand disposed of.

Learned counsel for the appellants has accepted that question involved in all these appeals is common.

Tenants are claiming declaration to the effect that they have become owners of the land, in view of the provisions of the Punjab Tenants (Vesting of Proprietary Rights) Act, 1953 ('the 1953 Act'). The tenants are further claiming that they be declared occupancy tenants, in terms of Section 8 of the Punjab Tenancy Act, 1887 ('the 1887 Act'). Plaintiffs/Tenants also prayed for grant of decree for permanent injunction.

The learned trial court decreed the suit filed by the plaintiffs after recording a finding that although the plaintiffs do not fulfill the requirements of Section 5(2) of the 1887 Act, yet they are entitled to be declared as occupancy tenants under Section 8 of the 1887 Act and hence became owners under the 1953 Act. However, the learned first appellate

court reversed the judgment and decree passed by the trial court and hence dismissed the suit filed by the plaintiffs-tenants. Regular Second appeals have been preferred by the plaintiffs-tenants.

Before noticing the facts and contentions, it shall be useful to extract the relevant statutory provisions of the 1887 Act and the 1953 Act, which are as under:-

Sections 5, 6, 7, 8, 9, 10 and 11 of the 1887 Act deal with the rights of occupancy tenant, which 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.*

Sections 2(f) and 3 of the 1953 Act are as under: –

“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

Section 3. 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 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.

For facility of reference, facts are being taken from RSA No.5057 of 2016.

The plaintiffs claim that they are in cultivating possession of the land measuring 81 Kanals and 10 Marlas since 1955. It is further claimed that earlier Sheo Lal son of Jiwna, predecessor-in-interest of the plaintiffs, was a tenant and thereafter the plaintiffs are in continue possession of the land. It is next pleaded that out of the total land, 4/11th share was allotted to Late Shri Sheo Lal, predecessor-in-interest of the plaintiffs by the Government of Haryana being surplus land under the Haryana Ceiling On Land Holdings Act, 1972. It is further pleaded by the plaintiffs that at the time of giving the land on lease to the forefather of the

plaintiffs, it was an oral agreement that he would never be evicted from the suit property. It was further claimed that the plaintiffs and their forefather have been in cultivating possession of the land at a fixed rent of Rs.64 paisa per kanal and the rate of rent remained favourable and nominal.

The plaintiffs further averred that their forefather made the land cultivable, which was barren. Their forefather invested the huge amount to make the land cultivable, installed a tubewell and also constructed a room and a store. In other cases, some of the plaintiffs have pleaded that as per custom prevalent, similarly situated tenants have been granted occupancy rights and thereafter ownership.

Defendants contested the suit and pleaded that the plaintiffs are tenant at will under the defendants. It was denied that the plaintiffs are entitled to be declared as occupancy tenants and thereafter owners.

The learned trial court after appreciating the evidence available on the file recorded a finding of fact that the plaintiffs cannot be declared as occupancy tenants because they have failed to fulfill the requirements of the statute under Section 5(2) of the 1887 Act. However, the learned trial court held that the plaintiffs are entitled to be declared as occupancy tenants under Section 8 of the 1887 Act and therefore, the plaintiffs have become owners in possession of the property by virtue of Sections 3 and 4 of the 1953 Act.

The learned first appellate court, after reappreciating the evidence available on the file, dismissed the suit after recording a finding that the plaintiffs have failed to establish their right to be declared as occupancy tenants under the 1887 Act and thereafter owners under the 1953 Act. That is how, these 14 appeals have come up for consideration before

this Court.

It is not the case of the plaintiffs that they have become occupancy tenants, in terms of Section 5(2) of the 1887 Act. As per Section 5(2) if a tenant proves that he has continuously occupied land for thirty years and paid no rent beyond the amount of the land-revenue 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).

It is not the pleaded case of the plaintiffs that they have not paid any rent for the land beyond the amount of land revenue, rates and cesses for the time being chargeable on the land. It is the case of the plaintiffs that they or their predecessor have already been allotted the proprietary rights of land to the extent of 4/11th share under the provisions of Haryana Ceiling On Land Holdings Act, 1972.

The learned trial court granted declaration to the plaintiffs under Section 8 of the 1887 Act. Section 8 of the Act is an enabling provision where any person can establish a right of occupancy tenant on any ground other than the grounds specified in those Sections. In other words, under Section 8, the Court is empowered to declare a person occupancy tenant if such person establishes a right of occupancy on any ground other than the grounds specified in Section 5, 6 and 7 of the 1887 Act. Section 9 of the 1887 Act clearly provides that merely on the ground that a tenant has been sitting over the land for sufficient long time would not enable the tenant to claim a right of occupancy.

The learned first appellate court has noticed, after discussing the evidence led namely copies of Jamabandis to prove the predecessor of

the plaintiffs and thereafter the plaintiffs are recorded as Gair Marusi (non-occupancy tenants). This fact is not contested by the Learned Senior Counsel for the appellants. Gair Marusi tenants are the tenants at will of the land owners. However, but for the right of inheritance available under the statutory provisions, such tenants were not having any right of inheritance of the tenancy. The word 'Marusi' means occupancy (source- Punjab Settlement Manual 1899 by Douie's), whereas Gair means 'non'. Therefore, the literal meaning of Gair Marusi is non occupancy. Such term is used for the tenants at the wish of the land owners.

The learned first appellate court has further noticed that predecessor of the plaintiffs was shown as Gair Marusi tenant on payment of 12 annas per bigha chakota, as per Jamabandi for the year 1946-47. In the Jamabandi for the year 1951-52, he was recorded as Gair Marusi but column of rent was blank and similar is the position in the Jamabandi for the year 1955-56. In the Jamabandi for the year 1959-60, status of the predecessor of the plaintiffs continues to be Gair Marusi and in Column No.9, lease money changes and it is recorded as Chakota per kanal 0.64 paisa. In the Jamabandi for the year 1963-64, 4/11th share was declared surplus and the rent column records as under:-

*“CHAKOTA FEE KANAL 64 PAISA RAQBA SURPLUS 4/11
HISSA BATAI 1/3 HISSA BASHRAH KHATA NO.77*

In the Jamabandi for the year 1968-69, with regard to 4/11th share, which has been declared surplus, Chakota per Kanal is payable @ 0.64 paisa per year but with regard to remaining, reference is made to Khata No.78, which in turn makes a reference to 1/3rd share in the land without the landowner being liable for expenses. Even in the subsequent

jamabandis, the rent column is continuing more or less in the same manner.

Photocopies of the revenue record was produced by the learned counsel for the appellant.

As per the Jamabandi for the year 1946-47, the land is recorded as Ala barani, which continues up to the year 2003-04. Ala barani is not a non-cultivable land. It is cultivable but irrigation depend upon the rain. Ala barani cannot be equated with banjar or banjar qadim.

If we analyse the Jamabandi for the year 1946-47, the rate of rent is 12 aanas per bigha i.e.Rs.5 per acre (approximately). Thereafter position does not appear to have changed as rent was 0.64 paisa per kanal which also comes to Rs.5 per acre but equation changed once 4/11th share was declared surplus and allotted to the predecessor of the plaintiffs. Thereafter with regard to the land 4/11th share, the rent is being shown as 0.64 paisa per kanal, whereas the remaining land is being shown as 1/3rd share in the crop to the landlords .

Although, the learned counsel for the appellants has vehemently argued that in fact 0.64 paisa per kanal was a rent for the land which was not declared surplus, however, a careful reading of column of rent in the Jamabandis, the argument of the learned counsel cannot be accepted. It is specific that the rent 0.64 paisa per kanal is with regard to 4/11th share, whereas for the remaining land, it is 1/3rd share of the crop without the landlord having to bear expenses of the assisted cultivation.

Still further, plaintiffs have not produced any evidence available on the file to prove that they have a right of occupancy, apart from on any other grounds than the grounds specified in Sections 5, 6 and 7 of the 1887 Act. Section 9 of the 1887 Act specifically provides that right of occupancy not to be acquired by mere lapse of time. Although in some

cases, plaintiffs had pleaded that they have a right to be declared as occupancy tenants under custom, however, no evidence has been led in support thereof. Before the courts below, the learned counsel representing the plaintiffs have not even raised such a contention. Even before this Court, no such argument was raised.

Learned counsel for the appellants has relied upon a judgment passed by this Court in **Dharam Singh (deceased) L.Rs and others Vs. Bhagwan Singh and others, 2005(2) RCR (Civil) 439**. In this case, the Court has dealt with the right of occupancy being claimed under Section 5 (2) of the 1887 Act. This Court ultimately rejected the claim filed by the tenants on the grounds that the nature of land was banjar qadim and such land being not cultivable and therefore, not falling within the definition of word land appearing in the Punjab Security of Land Tenures Act, 1953.

Learned counsel for the appellants has further referred to a judgment passed by this Court in **Ranjit Singh and others Vs. Municipal Corporation of Faridabad and others, 2011 (1) RCR (Civil) 105**. In this case, once again the claim for occupancy tenancy was on the basis of Section 5(2) of the 1887 Act and the Court rejected the claim of the tenant.

Learned counsel for the appellants has also placed reliance on a judgment passed by this Court in **Mauj Khan and others Vs. Deen Mohd and another, 2017 (1) RCR (Civil) 700**. This was again a case of claim made by tenant under Section 5(2) of the 1887 Act. In this case, the Court, after recording a finding of fact that the tenant was not paying the rent beyond the amount of land revenue, rates and cesses for time being chargeable thereon, decreed the suit. However, this is not the position herein.

In the present case, the plaintiffs are not claiming that the rent, which was being paid, was equivalent to the land revenue, cesses and charges payable on the land.

Learned counsel for the appellants has next referred to a judgment passed by this Court in **Muni Ram and others Vs. Phullia and Lalu, 1974 PLJ 369**. This Court in the aforesaid judgment broadly laid down the preposition of law on which the plaintiffs can prove their occupancy tenancy under Section 8 of the 1887 Act. The legal prepositions as interpreted by this Court are as under:-

- (i) the intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement which came into existence at the time of the commencement of the tenancy ;*
- (ii) mere length of possession does not entitle a tenant to acquire occupancy rights in the land in his possession as a tenant ;*
- (iii) the intention behind the wide scope left by Section 8 of the Tenancy Act is :-*
 - (a) not to restrict the tenant in any way from establishing his rights of occupancy ; and*
 - (b) to presuppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Sections 5 and 6 of the Tenancy Act;*
- (iv) in cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted ;*
- (v) a strong presumption of the implied promise not to eject a tenant, and, therefore, of the existence of an occupancy tenancy*

in favour of such a tenant can be raised :-

(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effort was made by the landlord to enhance the rent; and

(b) where despite the existence of a stray entry which is inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant.

The first proposition is that there must be an intention of the landlord not to eject the tenant at the time of inception of the tenancy. In this case, although the plaintiffs have pleaded this fact, however, no reliable evidence in support thereof has been led. The learned trial court has not even recorded a finding that there was any intention of the landlord not to evict the tenants at the time of inception of the tenancy.

In the present case, it is not in dispute that tenant has already been allotted 4/11th share of the land in their possession and proprietary rights have been conferred.

While interpreting a statutory provision which takes away the right to property of a owner, the courts have to be careful while interpreting the provisions strictly governed by the language of the statute. Section 8 of the 1887 Act enables a tenant to establish a right of occupancy on any other grounds than the grounds specified in other Sections of the 1887 Act. However, such establishment of right of occupancy has to be based either upon any other statutory provisions or rules or custom or uses etc. Section 9 of the 1887 Act clearly debars the court to grant the right of occupancy merely on the basis of long possession of a tenant.

No other argument was raised.

In view of the discussion made above, there is no good ground to interfere with the impugned judgment passed by the learned first appellate court. Accordingly, all these sixteen regular second appeals are dismissed.

08.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No