

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

RSA No.4872 of 2015 (O&M)

Date of Decision.22.01.2018

Jitender Singh and another

.....Appellants

Vs

Balbir and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.A. Sheoran, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-defendants are aggrieved of the judgment and decree passed by the lower Appellate Court whereby the suit of the respondents-plaintiffs seeking the following relief has been decreed, though the trial Court had declined the relief of ownership to respondents-plaintiffs under the Punjab Tenancy Act being not the occupancy tenants but granted the protection of possession qua dispossess or interfere except due course of law:-

“Suit for declaration to the effect that the plaintiffs are the joint owners in possession of the agricultural land comprised in Khewat No.764 Khatoni No.1032. Khasra Nos.195 2/2 (1-13), 3/1 (2-9), 8/2 (3-4) 9/1 (2-4), 13/3 (6-4), 14/1 (4-0), 18/1 (6-0), 24/1 (8-7), 23/1 (6-0) 25/1 (0-7) Khas 10, 42 kanals 4 marlas vide jamabandi for the year 2001-02 situated in the revenue estate of village Kairu, Tehsil Tosham, District Bhiwani on account of having acquired occupancy rights under Section 5 and 8 of the Punjab Tenancy Act with a consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs and to alienate the ibid land.”

Mr. R.A. Sheoran, learned counsel appearing on behalf of the

appellants-defendants submitted that the respondents-plaintiffs seeking the

aforementioned relief candidly admitted that they were not tenants and therefore, were unauthorized tenants. There was no contract between the parties authorizing the respondents-plaintiffs to occupy the tenancy rights. Revenue record from the year 1961 to 2002 produced on record also did not implore the status of tenants as the ingredients of Section 5 and 8 of the Punjab Tenancy Act have not been complied with. The trial Court on preponderance of the evidence, by interpreting the provisions of Section 5 and 8 of the Punjab Tenancy Act, 1887 and after going the judgment also on this point, held that the tenants did not fulfill the requirement of the aforementioned provisions, particularly Section 5(1), 5(2) of the Act, in essence, did not comply with ingredient regarding the status of tenant occupying the land for more than 30 years or proved that they paid the rent beyond the land revenue but the lower Appellate Court has committed illegality and perversity in upsetting the well reasoned finding, therefore, the judgment and decree passed by the lower Appellate Court is not sustainable in the eyes of law. In support of his contention, he relied upon the judgment passed by this Court in **Jug Lal Vs. Raghubir Singh (2014) 3 RCR (Civil) 559** wherein while considering the judgment rendered by this Court in **Natha Singh and others Vs. The Financial Commissioner, Taxation, Punjab and others AIR 1976 SC 1053** it was expressly held that in the absence of contract of tenant, the tenancy have to be proved either expressly or impliedly and as well as reference has to be made to column No.9 of jamabandi (revenue record). Column No.9 though reflected the entry but that would not clothe the respondents-plaintiffs' status as tenant. A gair maursi tenant cannot acquire the status and right of marusi (occupancy tenant) as held by this Court in **Jaleb Kahn and others Vs. Commissioner, Gurgaon Division, Gurgaon and others 2009(4) RCR (Civil) 385.**

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Sheoran, for, the statement of the plaintiffs that they had not paid rent would not absolve them the status of occupancy tenants on juxtaposition of revenue record i.e jamabandi from the year 1960-61 to 2001-2002. The aforementioned revenue record revealed that predecessor-in-interest of the respondents-plaintiffs had been paying rent at the rate of 60 paise per kanal total amount to ₹26.25, which was never enhanced by the owners. In **Muni Ram Versus Phullia and Lalu 1974 PLJ (P&H) 369,** following proposition of law was laid down:-

“(1) The intention of the landlord not to eject the tenant forever 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.

(2) Mere length of possession does not entitle a tenant to acquire occupancy right in the land in his possession on a tenant.

(3) The intention behind the wide scope left by section 8 of the Punjab Tenancy Act is:-

(a) not to restrict the tenant in any from establishing his right of occupancy; and

(b) to pre-suppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of section 5 and 6 of the Punjab Tenancy Act.

(4) In case where circumstances exist from which an inference of an implied promise not to eject a tenant forever 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.

(5) A very 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 had been a rise in process 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 false the rent or to recover anything for the owner from the tenant.”

It would also be apt to reproduce Sections 5 and 8 of the Punjab

Tenancy Act, 1887 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 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).

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.*”

In my view, the revenue record as noticed above and also the khasra girdawri proved that the predecessor-in-interest of the respondents-plaintiffs had been paying the rent, therefore, the same would protect their occupancy rights. The respondents-plaintiffs have been able to prove the status of tenants as per the provisions of Section 5 and 8 of the Punjab Tenancy Act. The judgment passed by the lower Appellate Court discarding the finding of the trial Court declining the status of occupancy tenants to respondents-plaintiffs is based upon the documentary evidence and is perfectly legal and justified. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 22, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No