

**Sr. No.102
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.5142 of 2015 (O&M)

Date of Decision: 04.07.2018

Ramesh and others

... Appellants

Versus

Gram Panchayat Bissar Akbarpur

... Respondent

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

Present:- Mr. Rakesh Kumar Sharma, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA, J.

CM No.12285-C of 2015

For the reasons stated in the application, prayer is
allowed.

The delay of 53 days in refiling the accompanying
appeal is condoned.

Application disposed of.

Main Appeal

The plaintiffs-appellants are in second appeal before
this Court having remained unsuccessful in both the Courts below.

Briefly noticed plaintiffs instituted a suit seeking
declaration to the effect that plaintiff Nos.1 to 3 have become
owners in possession in respect of suit land detailed in para 1-a of
the plaint, plaintiff Nos.4 and 5 to have become owners in
possession in respect of suit land detailed in para 1-b of the plaint
and plaintiff Nos.6 to 8 to have become owners in possession in

respect of suit land detailed in para 1-c of the plaint.

It was pleaded that the predecessor-in-interest of the plaintiffs were continuing as *Gar Marusi* tenants in respect of land detailed in paras 1-a, 1-b and 1-c of the plaint and they had never been ejected from the suit land. No *batai* had been paid except the land revenue to the defendant Gram Panchayat or its predecessor-in-interest since the date of inception of tenancy of the plaintiffs and their predecessor-in-interest since 1938-39. Ownership rights were being asserted in view of the provisions of the Punjab Occupancy Tenants (Vesting of Property Rights) Act.

Notice in the suit having been issued, no representation was caused on behalf of the defendant Panchayat and was accordingly proceeded ex parte.

Trial Court dismissed the suit filed by the plaintiffs and even a civil appeal preferred by them has met the same fate in terms of judgment dated 30.01.2015 passed by the First Appellate Court.

I have heard Mr. Rakesh Kumar Sharma, learned counsel representing the appellants.

The entire case of the appellants as projected by learned counsel is that the plaintiffs/appellants had acquired occupancy status and consequently became owners of the land in dispute in view of the provisions of Punjab Occupancy Tenants (Vesting of Property Rights) Act i.e. the Vesting Act.

The Courts below have examined the evidence adduced on record which was in the shape of *Jamabandis* Ex. P-10,

P-15, P-16, P-17 and P-18 of different years and have concluded that possession of the plaintiffs over the suit land as *Gar Marusi* was on account of being earlier proprietors. It has been noticed that in column 9 of these *jamabandis* the entry is to the effect Bashrah Malkan Kabja Sabka Hissedari.

Such entry reflected the plaintiffs/predecessor-in-interest to be co-owners as prior to the existence of the Punjab Village Common Land (Regulations) Act, lands mutated to Panchayat were the properties of the proprietors of the village.

Jamabandis Ex.P-4/T and Ex. P-39/T for the years 1943-44 and 1951-52 have also been noticed which reflect that at that time ownership was in the name of *Shamlat Deh Majkoor* and thereafter property was mutated to the Gram Panchayat on coming into existence of the Punjab Village Common Land (Regulations) Act.

Counsel for the appellants does not dispute the entries in the *jamabandi* referred to hereinabove but submits that these were only stray entries.

This Court is in agreement with a view taken by the Courts below that when earlier the land in question was *Shamlat Deh* and possession of the plaintiffs/predecessor-in-interest was in the capacity of earlier proprietors, then being co-sharer they cannot claim occupancy status.

In the considered view of this Court, the Courts below have rightfully denied to the appellants/plaintiffs the relief of declaration as had been sought.

The instant appeal does not raise any question of law much less substantial question of law.

Appeal dismissed.

Since the main appeal itself has been decided, pending application(s), if any, shall stand disposed of.

04.07.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No