

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1398 of 2017 (O&M)

Date of Decision: November 12, 2018

Dhan Singh

Appellant

Versus

Gram Panchayat, Village Indicii, Thesis Nub, District Meat

Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.3312-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 109 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.1398 of 2017

The short point involved in the present appeal is whether appellant being gair mumkin tenant can claim the declaration of having become owner by virtue of provisions of Sections 5 and 8 of the Punjab Tenancy Act and Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Right), Act.

Both the courts below have negated the prayer of the appellant.

The aforementioned controversy has been settled by the judgment of this

court in **Jaleb Khan and others Versus Commissioner, Gurgaon**

Division, Gurgaon and others, 2009(4) R.C.R. (Civil) 385. For the sake of brevity, Paras 4 to 6 read thus:-

“4. After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures-P.7, P.8 and P.9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gain Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.

5. The contention that in view of the order dated 25.1.1996 (Annexure-P.6) whereby the earlier application under Section 7 of the Act has been dismissed and the said order operates as res judicata is also devoid of merit. A perusal of the order dated 25.1.1996 shows that the petition filed by the Gram Panchayat, Agon under Section 7 of the Act was dismissed in default. The order records, the case called. The applicant, respondent and their counsel were not present. It appears that applicant, respondent and their counsel did not want to pursue with the case. Therefore, the file was ordered to be consigned to record room for non prosecution. There is no specific order dismissing the petition but the file was ordered to be consigned to the record room for non-prosecution but the intent is that it was dismissed for non-prosecution. Therefore, nothing was decided in the previous litigation which would operate as res

judicata between the parties. It is not shown by the learned counsel for the petitioners that the filing of subsequent petition is, in any manner, barred.

6. *The contention that the land is in two portions; one measuring 48 Kanals 5 Marlas which is on 'Chakota' and the other measuring 8 Kanals which is in possession of their ancestors since 1962 is also devoid of merit. In all the Jamabandis as referred to above , as already noticed, Kallu the predecessor-in-interest was recorded as 'Gair Marusi' and, therefore, the petitioners can not deny the right of ownership of the Gram Panchayat. Nothing has been shown that the petitioners had acquired ownership rights by way of adverse possession or that their possession over the land is since the time of consolidation which is duly reflected in the revenue records. The petitioner and their predecessor-in-interest came in possession of the land as lessees. Therefore, being lessees they are estopped from denying the title and claim of the lessor in view of the principle of estoppel as provided under Section 116 of the Evidence Act, 1872.*

In the circumstances, there is no merit in this petition and the same is accordingly dismissed."

In view of the aforementioned ratio, a gair mumkin tenant cannot seek the status of a occupancy tenant. The findings of fact and law arrived at by the courts below do not call for any interference or can be said to be faulty. No ground for interference is made out. Resultantly, the appeal is dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No

