

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4412 of 2014
Date of Decision:23.02.2018

Ram Kishan and others

...Appellants

Versus

Jagdish and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sudhir Aggarwal, Advocate for the appellants.
Mr.Amit Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

In the considered opinion of this Court, question of law which arises for consideration is whether a person, who has been recorded as Gair Marusi (non-occupancy), is entitled to claim that he is occupancy tenant and consequently owner.

Plaintiffs filed a suit, claiming that they are in possession of 14 kanals situated within the revenue estate of Village Ujina, Tehsil Nuh, District Mewat in the capacity of occupancy tenant-BILLA LAGAN BAWAJAH DARINA KASHT. The plaintiffs further pleaded that they are in continuous possession of the land for the last more than 30 years and had paid no rent beyond the amount of land revenue. Hence, they have become owners as per the provisions of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 ('the 1952 Act' for short).

The defendants contested the suit and pleaded that the plaintiffs

are neither owner nor in possession of the property. It is pleaded that the plaintiffs are living in Gurgaon which is 60 kms away from the village.

Both the courts, after considering that since the plaintiffs are recorded as Gair Marusi in the cultivation column and in the rent column, their possession is recorded on account of BILLA LAGAN BAWAJAH DARINA KASHT for more than 30 years, decreed the suit. The courts have assumed that word Gair Marusi in the cultivation column means a tenant whereas BILLA LAGAN BAWAJAH DARINA KASHT has been interpreted to mean that the plaintiffs are tenants without payment of rent to the landlords.

Now, the stage is set for considering the following question of law.

“Whether a person, who has been recorded as Gair Marusi (non-occupancy), is entitled to claim that he is occupancy tenant and consequently owner.

In the considered opinion of this Court, both the courts below have committed a material illegality in reading the entries in the jamabandies. The plaintiffs in the jamabandi for the year 1963-64 are recorded in the cultivation column as Gair Marusi. The literal meaning of Gair Marusi is known as non-occupancy. In the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT. Thereafter as per jamabandi for the year 1968-69 in the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT which continues up to the year 2003-2004. The literal meaning of words BILLA LAGAN BAWAJAH DARINA KASHT is that the persons are proclaiming to be owners by reason of being in the cultivating possession since long.

As noticed earlier, the meaning of word Gair Marusi is non-

occupancy. In view of these entries, the plaintiffs are not even proved to be tenant on the land. The word Gair Marusi itself does not imply that the person in occupation is a tenant. For arriving at conclusion whether a person is tenant or not, the entry in the column of rent has to be carefully read in conjunction with the entry in cultivation column. In the present case, the entry in the rent column does not show that the plaintiffs were in possession as a tenant under the land owners.

This Court has already considered the word Gair Marusi and has held that a person, who is recorded as Gair Marusi, can never claim rights of occupancy tenant. Reference in this regard can be made to the judgment passed by this Court on 26.10.2017 in ***RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others)***. This Court has in turn relied upon a judgment passed by the learned Single Judge of this Court in ***Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2010 (1) PLR 111***.

The plaintiffs are claiming the right of occupancy under Section 5(2) of the 1887 Act. Section 5 of the 1887 Act is 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.”

A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act.

Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly

construed. In the present case, the plaintiffs are not even proved to be tenant. Hence, they are not entitled to declaration as prayed for.

In view of discussion made above, the question of law framed above is answered in favour of the appellants. The impugned judgments passed by both the courts below are set aside. The present regular second appeal is allowed. All miscellaneous applications, if any pending, shall stand disposed of.

23.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4412 of 2014
Date of Decision:23.02.2018

Ram Kishan and others

...Appellants

Versus

Jagdish and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sudhir Aggarwal, Advocate for the appellants.
Mr.Amit Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

In the considered opinion of this Court, question of law which arises for consideration is whether a person, who has been recorded as Gair Marusi (non-occupancy), is entitled to claim that he is occupancy tenant and consequently owner.

Plaintiffs filed a suit, claiming that they are in possession of 14 kanals situated within the revenue estate of Village Ujina, Tehsil Nuh, District Mewat in the capacity of occupancy tenant-BILLA LAGAN BAWAJAH DARINA KASHT. The plaintiffs further pleaded that they are in continuous possession of the land for the last more than 30 years and had paid no rent beyond the amount of land revenue. Hence, they have become owners as per the provisions of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 ('the 1952 Act' for short).

The defendants contested the suit and pleaded that the plaintiffs

are neither owner nor in possession of the property. It is pleaded that the plaintiffs are living in Gurgaon which is 60 kms away from the village.

Both the courts, after considering that since the plaintiffs are recorded as Gair Marusi in the cultivation column and in the rent column, their possession is recorded on account of BILLA LAGAN BAWAJAH DARINA KASHT for more than 30 years, decreed the suit. The courts have assumed that word Gair Marusi in the cultivation column means a tenant whereas BILLA LAGAN BAWAJAH DARINA KASHT has been interpreted to mean that the plaintiffs are tenants without payment of rent to the landlords.

Now, the stage is set for considering the following question of law.

“Whether a person, who has been recorded as Gair Marusi (non-occupancy), is entitled to claim that he is occupancy tenant and consequently owner.

In the considered opinion of this Court, both the courts below have committed a material illegality in reading the entries in the jamabandies. The plaintiffs in the jamabandi for the year 1963-64 are recorded in the cultivation column as Gair Marusi. The literal meaning of Gair Marusi is known as non-occupancy. In the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT. Thereafter as per jamabandi for the year 1968-69 in the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT which continues up to the year 2003-2004. The literal meaning of words BILLA LAGAN BAWAJAH DARINA KASHT is that the persons are proclaiming to be owners by reason of being in the cultivating possession since long.

As noticed earlier, the meaning of word Gair Marusi is non-

occupancy. In view of these entries, the plaintiffs are not even proved to be tenant on the land. The word Gair Marusi itself does not imply that the person in occupation is a tenant. For arriving at conclusion whether a person is tenant or not, the entry in the column of rent has to be carefully read in conjunction with the entry in cultivation column. In the present case, the entry in the rent column does not show that the plaintiffs were in possession as a tenant under the land owners.

This Court has already considered the word Gair Marusi and has held that a person, who is recorded as Gair Marusi, can never claim rights of occupancy tenant. Reference in this regard can be made to the judgment passed by this Court on 26.10.2017 in ***RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others)***. This Court has in turn relied upon a judgment passed by the learned Single Judge of this Court in ***Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2010 (1) PLR 111***.

The plaintiffs are claiming the right of occupancy under Section 5(2) of the 1887 Act. Section 5 of the 1887 Act is 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.”

A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act.

Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly

construed. In the present case, the plaintiffs are not even proved to be tenant. Hence, they are not entitled to declaration as prayed for.

In view of discussion made above, the question of law framed above is answered in favour of the appellants. The impugned judgments passed by both the courts below are set aside. The present regular second appeal is allowed. All miscellaneous applications, if any pending, shall stand disposed of.

23.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No