

RSA Nos.1597 & 934 of 2017 (O&M)

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

Date of decision : 03.12.2018

1.

RSA-1597-2017 (O&M)

Gaje Singh and others

... Appellant

Versus

Sulekh Chand @ Sulakhna and others

... Respondents

2.

RSA-934-2017 (O&M)

Gaje Singh and others

... Appellants

Versus

Kalawati (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for the appellants.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing **RSA No.1597 of 2017** titled as **“Gaje Singh and others V/s Sulekh Chand @ Sulakhna and others”**, arising out of decision of civil suit bearing No.355 of 2008 (in short 'the first suit'), whereby the appellants-plaintiffs were not successful in claiming the declaration of having become owner by laying challenge to the compromise decree dated 24.03.1977 and **RSA No.934 of 2017** titled as **“Gaje Singh and others V/s Kalawati**

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(deceased) through LRs and others” arising out of decision of Civil Suit No.273 of 2008 (in short 'the second suit'), whereby the appellants-defendants in that suit have been restrained from forcible dispossession. Since the controversy between the parties in both the appeals is for one piece of land, therefore, both the appeals are being decided by common order.

In the first suit, the appellants-plaintiffs alleged that Bhura Singh was the owner of land measuring 1055 sq. yds. and Sulekh Chand @ Sulakhan/defendant was an occupant tenant. In the ejectment proceedings initiated by Bhura Singh, a compromise decree dated 24.03.1977 was arrived at, whereby Sulekh Chand was conferred ownership to the extent of 360 sq. yds., and rest of the property was returned to Bhura Singh. Sulekh Chand, vide sale deed dated 05.12.2007, sold the land to defendant Nos.2 to 6, which was assailed in the suit.

The defendants opposed the suit claimed themselves to be owner of the land on the basis of reasonable enquiry and *bona fide* purchasers also supported the entry of ownership in favour of Sulekh Chand in the revenue record. In second suit, sought injunction against the appellant-plaintiffs, who were arrayed as defendants qua forcible interference and dispossession.

Learned counsel appearing on behalf of the appellants in RSA-1597-2017 submitted that decree of 1977 could not have been acted upon as the entry in the revenue record conferring ownership of land measuring 360 sq. yds., in favour of Sulekh Chand required registration being a document having value of more than ₹100/-. In such circumstances, Sulekh Chand could not acquire the title and therefore, was estopped to alienate the land

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by way of registered sale deed. The possession was with the plaintiffs and therefore, injunction could not have been granted.

I am afraid the aforementioned arguments are not sustainable as the provisions of Sections 5 and 8 of the Punjab Tenancy Act envisage the conferment of ownership of an occupant tenant. The decree dated 24.03.1977 acknowledged the aforementioned fact and therefore, did not require registration. For the sake of brevity, Sections 5 and 8 of the Punjab Tenancy Act, read thus:-

"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 land-owner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be land-owner, continuously occupied the land, or

(c) who, in a village or estate in which he settled alongwith, 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

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*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 clause (c),
the land-lord 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 therefor 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 has 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.*

Section 8

***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."***

As a consequential effect, entry in the revenue record was also corrected and Sulekh Chand was shown to be the owner of land measuring 360 sq. yds. It is a matter of record that Bhura Singh died in the year 1995 and during all this period, he did not assail, aforementioned, decree. The doctrine of acquiescence, which is recognized in law, is, thus, applicable. The appellants have failed to place on record any material to establish the possession in respect of land measuring 360 sq. yds. The judgments and decrees of the Courts below dismissing the first suit and decreeing the second suit cannot be faulted with.

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No ground for interference is made out, much less, no substantial question of law arises for determination. Accordingly, the appeals are dismissed.

03.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**