

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

RSA No.3010 of 2017

Date of Decision: 20.08.2018

Santosh and others

.....Appellants

Vs.

Brahmanand and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Tara Chand Dhanwal, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

The appellants have come up in appeal against the judgment of learned trial Court dated 15.04.2014 and learned appellate Court dated 08.03.2017 whereby, the appeal against the judgment and decree has been accepted and the suit of the plaintiff has been decreed as the plaintiffs have acquired the occupancy rights and thus, they are entitled to enter their name as owners in the revenue records in respect of the suit property.

Brief facts of the case are that plaintiffs (respondents herein) are permanent residents of Village Babarwas and are agriculturists and they are residing in the said village since the time of their ancestors. The plaintiffs have been cultivating the land comprised in Khewat No.24/48, Khatoni No.39, Khasra No.678, measuring 38 Bighe 7 Biswe as per jamabandi for the year 1971-72. The aforesaid land was given by its then owners on rent to the predecessors of the plaintiffs around 50 years ago for the purpose of cultivation on rent of Rs.50 paise per bigha totaling Rs.20/- per annum for the suit land by the land owners. At the time of inception of

tenancy, the suit land was unfit for cultivation and the same was made cultivable on the oral promise of the owners that the ancestors of the plaintiffs and their successors shall never be ejected from the suit land. The forefathers of the plaintiffs by dint of their hard labour and by spending huge amount made the land cultivable and have been paying nominal rent to the land owners and are cultivating the same since then. They have neither been ejected from the suit land by any Court nor they have surrendered the possessory rights to the defendants. The plaintiffs have thus acquired occupancy rights in respect of the suit land under the provisions of Section 5 and Section 8 of the Punjab Tenancy Act 1887 (hereinafter referred to as Tenance Act). It is further alleged that although Chiranji Lal (father of plaintiff Nos.1 to 4 and grandfather of plaintiff Nos.5 to 7) alongwith his brothers Shish Ram, Jug Lal, Dattu and Tek Chand have since died and the plaintiffs have come into their footsteps. It was alleged that previously, the plaintiffs had filed a suit for declaration of their title in the Court of Assistant Collector Its Grade, Bhiwani which was allowed in their favour on 19.02.1996 and mutation No.212 dated 31.07.1996 was accordingly entered and sanctioned. However, feeling aggrieved, defendants went in appeal and the Collector, Bhiwani remanded the case back to the Assistant Collector Ist Grade vide order dated 07.04.1998. Since, Civil Courts were subsequently vested with the powers of adjudicating the matter, the plaint of the plaintiffs was returned by the revenue Court for approaching the competent Court vide order dated 15.12.2006.

Upon being issued notice, defendants appeared and filed joint written statement raising preliminary objections on the ground of cause of action, maintainability, locus standi, estoppel, court fee

jurisdiction, non-joinder/mis-joinder etc. On merits, the averments of the plaint were broadly denied and it was strenuously contended that the suit land was never made cultivable by Nanga, the predecessor-in-interest of the plaintiffs and rate of rent was variable from time to time. It was further contended that the defendants are pursuing the ejectment proceedings against the plaintiffs. It was thus prayed that suit of the plaintiffs be dismissed with costs. From the pleadings of the parties, the following issues were framed by the trial Court on 21.07.2010:-

1. Whether the plaintiffs are entitled to the declaration as prayed for? OPP.
2. Whether the suit is properly valued for the purposes of Court fees and jurisdiction? OPD.
3. Whether the Civil Court has the jurisdiction to try and entertain the present suit? OPD.
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
5. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
6. Relief.

Plaintiffs, during the course of their evidence, examined Laxmi Narayan as PW1 who tendered his affidavit Ex.PW1/A. Ram Niwas has appeared as PW-2, who tendered his affidavit Ex.PW2/A. Santu @ Sant lal has appeared as PW-3 and tendered his affidavit Ex.PW3/A. Thereafter, evidence of the plaintiffs was closed by Shri A.L.Hans, Advocate vide separate statement and various documents have been placed on the file i.e. Ex.P1 to Ex.P43/A and Mark P-1 and P-2.

On the other hand, defendants examined Jamna Singh son of Hari Singh, residents of village Kairu as DW-1 who tendered his affidavit Ex.DW1/A. Bagrawat Singh has appeared as DW-2, who tendered his

affidavit as Ex.DW2/A. Thereafter, evidence of the defendants was closed by Sh.GD Makkar Advocate vide separate statement.

In the present case, it is the version of the plaintiffs that the suit land was barren, uneven, uncultivable and full with bushes and thorns and it is the plaintiffs who have made the same cultivable. However, perusal of the file would reveal that there is absolutely no cogent or convincing evidence on file to prove the said facts. Though the plaintiffs have placed on record jamabandis pertaining to the suit land but in none of the jamabandies, the suit land has been shown to be uncultivable as alleged. A perusal of the file shows that plaintiffs have based their claim on the jamabandi for the year 1971-72 Ex.P10 and Shish Ram, Chiranji lal, Jug Lal, Dattu and Tek Chand are in possession of the suit property as *gair marusi* tenants. However, the present suit has been filed by the successors in interest of one of the occupants, namely, Chiranji Lal. There is no whisper about other occupants of the suit property. Though the plaintiffs claim that the other occupants of the suit property have died issueless and the property has devolved upon the plaintiffs but there is neither any evidence qua the said fact nor the said fact has been pleaded by the plaintiffs in their plaint.

Learned trial Court has dismissed the case of the plaintiff as the facts of the present case are entirely different and thus the cited authorities are not applicable to the facts in hand. In the present case, there is no cogent and convincing evidence to prove that there was an agreement of no ejectment between the parties or that the suit property was made cultivable by the predecessors of the plaintiffs by putting hard labour. Similarly the plaintiffs have not been able to prove that the rate of rent and cess was equal

to the land revenue payable. There is no explanation for not impleading the other tenants and there is no evidence on file to prove that the present plaintiffs have acquired the tenancy rights of the other co-occupants.

Aggrieved against the order of the trial Court plaintiffs filed appeal against respondents No.1 to 4. In the present case there is implied admission of the defendants that the defendants or their predecessors have never been in possession over the suit land. In addition to it, DW1 Baghrawat Singh, defendant No.1, has stepped into the witness box on behalf of the defendants and during his court statement, he has admitted that Nanga was grandfather of plaintiff Nos.1 to 4 and that he was survived by his five sons namely Shish Ram, Chiranjilal, Jug Lal, Dattu and Tek Chand. He has admitted that Nanga was thus ancestor of the plaintiffs. During cross-examination, he has admitted that none of the defendants have filed any case for correction of Khasra girdawari entries and that plaintiffs and their predecessors have been in possession over the suit land much before the commencement of the Vesting of Proprietary Right Act. Further, a bare glance at the testimony of DW1 makes it crystal clear that he has nowhere denied that prices of essential commodities have not increased manifold since the predecessors of plaintiffs or the plaintiffs have been in possession. As noticed earlier, Ex.H.P34/Exh.P34/1, jamabandi for the year 1903-04 shows that total land was 38 bigha 7 biswa and the rate of rent was Rs.3/- per annum, whereas, in year 1911-12 it was Rs.5/- per annum. The same rent has been shown up to year 1944-45. In the subsequent records related to the said land Exh.P32/Exh.P32/1, rate of rent has been shown as Rs.9.80/- , whereas, in jamabandi 1956-57 Exh.P7/Exh.P7/1, it is now Rs.20/- for the entire year. The same rate of rent has been shown for the whole of the suit

land per annum till year 1971-72. this way, if we calculate the rent qua the suit land in the above referred documents of different years, it is evident that the rate of rent remained very nominal in nature since the inception of tenancy till filing of the suit land. Apart that, no doubt, DW1 claimed that land in question was cultivable since beginning and that the predecessor of the plaintiffs did not make the same cultivable by dint of their hard labour yet revenue record brought on the case filed reveal that the nature of land was Taal. No specific clarification was given by the learned counsel for the defendants about the source of irrigation qua this land. However, a taal land may be categorized as irrigated by pond. There must be some low lying area in this land where the rainy water must be collected. If so was the nature of the land then the stand of the defendants cannot be accepted that suit land was already made cultivable by the predecessors-in-interest of the defendants prior to inception of tenancy. Since, the defendants failed to adduce any iota of evidence to prove that the rent payable was more than land revenue or that suit land was already cultivable, version of the plaintiffs has to be believed particularly because defendants have not examined any of the previous owners to rebut the evidence led by the plaintiffs. There is also no evidence on the part of defendants that they ever made any effort to increase the rent.

At this stage, a reference has been made to the judgment of this Court in the case of Muni Ram and others Vs. Phullia and Lalu 1974 PLJ 369 wherein, it is held that mere length of possession does not entitled a tenant to acquire occupancy rights in the land in his possession as a tenant. It is further held that to presuppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Section 5 and 6 of

the Tenancy act. In this case, findings have been reversed and decision has been given in favour of respondent/plaintiff. It is further held in the case of Hazara Singh Vs. The Financial Commissioner, Haryana 1995 (2) RRR 271 that if the tenancy continued for more than 30 years and there was no intention of the landowner to dislodge the tenant, a status of the occupancy tenant is conferred upon the tenant and a declaration can be granted in his favour. In the case of Amin Lal Vs. Financial Commissioner (Revenue) Haryana, Chandigarh and others, 1972 PLR 96, the defendants gave up that point and have ultimately conceded that the Courts below had the jurisdiction to try and decide the suit from which this appeal has arisen. At this stage, case. In the case of Dharam Singh (deceased) L.Rs. And others Vs. Bhagwan Singh and others 2005 (3) All India LLR, 172, has held that where the plaintiffs are seeking declaration of their title on the basis of Punjab Tenancy Act, 1887 or Punjab Occupancy Tenants (Vesting of Propriety Rights) Act, 1952, the Civil Court has jurisdiction.

Learned counsel for the appellants has not been able to cite any judgment to show that Civil Court had no jurisdiction to entertain any suit for declaration of any right for Punjab Tenancy Act, 1887. Even they have not led any evidence that what was the land revenue rate from the year 1903-04. The possession of the plaintiffs over the suit land on payment of nominal is proved for the last more than 30 years and it is established that rent had never been enhanced. It is also proved on the file that the prices of essential commodities have increased manifold during the last 40/50 years and from the material available on record. The plaintiffs have been successful in raising the presumption that there was an implied agreement between the parties not to eject the plaintiffs or their predecessors. It was

for the landlord to rebut that the implied promise did not exist but the defendants miserably failed in this regard. As such, the plaintiffs/respondents fulfill the conditions laid down in Section 5(2) and Section 8 Punjab Tenancy Act and consequentially the plaintiffs have acquired ownership rights in the suit land in view of Section 3 Vesting of Proprietary Rights Act and they are entitled to declaration as prayed for.

So in view of the above, the orders of the learned appellate Court does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

20.08.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No