

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

1. RSA No.5321 of 2017 (O&M)
Date of decision : 29.08.2018

Mehar Chand and others

...Appellants

Versus

Radha Krishan and others

...Respondents

2. RSA No.4444 of 2017 (O&M)
Date of decision : 29.08.2018

Mehar Chand and others

...Appellants

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Amit Jain, Advocate for the appellants.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this judgment, two appeals referred to above shall stand decided as issue which needs determination is common. The two suits were basically cross suits, although disposed of by separate judgments passed by the Courts below, however, learned counsel for the appellants admits that

both these appeals can conveniently be decided by a common judgment. The facts are being taken from RSA No.5321 of 2017.

The plaintiffs-appellants filed suit for declaration with consequential relief of permanent injunction claiming that the plaintiffs are in actual and physical cultivating possession of land measuring 18 kanals 6 marlas situated within the revenue estate of Village Nangli Amarpur Gurgaon. Plaintiffs claimed that they are old occupancy tenants of the agricultural land at the rate of ₹8/- per year. It is further pleaded case of the plaintiffs that there was understanding between the plaintiffs and the landlords that they shall not be ejected from the land. Plaintiffs claimed that they are cultivating the land in question for more than 60 years. They have made improvements on the land and now as per the provisions of Punjab Tenancy Act, 1887, they have attained the status of occupancy tenants and consequently as per the provisions of Punjab Occupancy (Vesting of Proprietary Rights) Act, 1953 (hereinafter to be referred as “the Act of 1953”), they have become owners in possession of the property. Plaintiffs further submitted that they had earlier filed a suit for declaration which was withdrawn on the ground of lack of jurisdiction and a regular suit for declaration was filed before the Collector, Gurgaon which was decided on 17.03.2005. The suit was dismissed as the plaintiffs were not found in possession. However, in appeal the judgment passed by Assistant Collector was set aside on the ground that the order passed by the Assistant Collector is without jurisdiction and the plaintiffs were directed to approach the Civil Court. Hence, this suit.

It is further pleaded case of the plaintiffs that the partition took

place between the parties and the defendants wrongly got entered their names as self-cultivators compelling the plaintiffs to file application for review which was allowed and order dated 18.10.1996 was set aside and entry of plaintiffs being tenant continued.

The defendants contested the suit. Defendants Nos.1 to 4 pleaded that after the correction of entry, they have sold the entire land except land measuring 15 marlas. Status of the plaintiffs being occupancy tenants and, therefore, having become owner was denied. It was further denied that there was any agreement or settlement not to evict the plaintiffs from the suit land. Defendant No.5 contested the suit and pleaded that she is bona fide purchaser of the property in possession thereof.

On the other hand, defendants in Civil Suit No.49 of 2006 filed a separate suit claiming that the entries in the revenue record continuing to depict defendants(plaintiffs in the first suit) are erroneous. It was pleaded that predecessor-in-interest of the defendants (plaintiffs in the first suit) had voluntarily surrendered their tenancy rights and they had also purchased some part of the property i.e. share of Brahm Dutt son of Jai Dayal.

Both the Courts after appreciating the evidence available on the file, dismissed the suit No.49 of 2006 filed by the appellants in RSA No.5321 of 2017. Even appeal filed against the aforesaid judgment has been dismissed by the First Appellate Court after re-appreciation of the evidence. In the second case, suit filed by the owners was decreed whereas appeal filed by defendants (plaintiffs in the present suit) has been dismissed.

This Court has heard the learned counsel for the appellants at length and with his able assistance gone through the judgments passed by

both the Courts below in both the suits.

It is undisputed that the appellants had purchased share of one of the co-owner namely Brahm Dutt. It is also undisputed that there was partition proceedings between the co-sharers and in the aforesaid partition proceedings, parcel of land of every co-sharer was separated and each co-sharer was put in possession of respective share through execution of the decree for partition by making a entry in the daily diary report.

Both the Courts have further found that appellants have failed to prove that they have achieved the status of occupancy tenants and hence acquired ownership as per Act of 1953. Although, learned counsel for the appellants while drawing attention of the Court to certain findings of the First Appellate Court with regard to bar to the second suit as per Order 23 Rule 1 CPC and the findings of the First Appellate Court with regard to tenancy having merged on purchase of part of the property, submitted that the First Appellate Court has gone wrong on these aspects. However, this Courts finds that the judgments passed by the Courts below are sustainable on other grounds. No doubt, the judgment of the First Appellate Court with regard to tenancy having come to an end on account of purchase of part of the property is erroneous. Unless a tenant purchases entire property, his tenancy rights does not cease to exist. It is also true that the bar to the fresh suit under Order 23 Rule 1 CPC can only be invoked if the suit is on same cause of action. In the present case, initially a civil suit was filed which was withdrawn and the appellants filed an application before the Revenue Authorities and since the Revenue Authorities did not had jurisdiction to declare the plaintiffs as owners after having acquired the status of

occupancy tenants, therefore, the present suit was filed. Hence, the finding of the First Appellate Court on these two aspects is erroneous.

However, in the considered view that would not make any difference, because appellants have failed to prove that they fulfill the ingredients of Section 5 of the Punjab Tenancy Act, 1887 for acquiring the status of occupancy tenants. The entry in favour of the appellants as per the revenue record is “gair marusi”. Literal meaning of word “gair marusi” is “non-occupancy”.

Learned counsel for the appellants could not draw attention of the Court to any provision of the Punjab Tenancy Act, 1887 which provides that a non-occupancy tenant by operation of law would become occupancy tenant. Still further as per Section 5 of the Punjab Tenancy Act, 1887, merely because tenant is in occupation of the land for more than 30 years continuously is not sufficient to declare a tenant to be occupancy tenant. As per Section 5(2) of the Tenancy Act, 1887, a tenant is also required to prove that he has paid no rent of the land beyond the amount of land revenue and the rates and cesses for time being are chargeable. In the present case, appellants have failed to prove that they have not paid any rent beyond the amount of land revenue and rates and cesses payable on the land.

Still further, once the appellants have purchased the share in the property through registered sale deed from Shri Brahm Dutt, one of the co-sharer, they admit the ownership of owners. Still further, the Courts have found that after the partition of the property, respective co-sharers were put in possession and the appellants are not in possession of the property. Thus, it is obvious that appellants on the day filed the suit as plaintiffs, they were

not in possession.

In these circumstances, this Court although while partially reversing the judgment of the First Appellate Court on two counts, referred to above, still finds no ground to interfere with the concurrent findings of fact. Hence both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

29.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No