

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

RSA No.1122 of 1992 (O&M)

Date of decision:22.04.2019

Peera (deceased) through LR's and others

... Appellants

Vs.

Ram Avtar (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Nupur Chaudhary, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiffs has been decreed in toto, though the trial Court had decreed the suit in part.

The respondent-plaintiffs simpliciter sought the injunction against the appellant-defendants on the ground that they were the owners of 1/3 share in the land measuring 54 kanals 19 marlas as per the jamabandi for the year 1982-83. It was orally partitioned by way of family settlement amongst the co-sharers and the suit property bearing killa numbers measuring 18 kanals had fallen to their share on which defendants had no concern. The possession of the defendants was incorrect and entry in the jamabandi showing them as tenants was also incorrect.

The defendants opposed the suit and claimed themselves to be tenant/*gair marusi*. The entries in the jamabandi and khasra girdawari were as per the factual aspect.

Since the parties were at variance, the trial Court framed the following issues:

- “1. Whether the plaintiffs are owners in possession of the property in dispute as alleged?OPP*
- 2. Whether the plaintiffs are entitled to the injunction as prayed for?OPP*
- 3. Whether any statement took place in between the plaintiffs and the defendant no.4, if so its effect?OPP*
- 4. Whether the defendants no.1 to 3 are in possession over the property in dispute as tenants as alleged?OPD*
- 5. Whether no cause of action has accrued to the plaintiffs to file the suit?OPD*
- 6. Whether the suit is time barred?OPD*
- 7. Whether the suit properly valued for the purpose of court fee and jurisdiction and the court fee is deficient?OPD*
- 8. Whether the suit is not maintainable in the present form?OPD*
- 9. Whether this Court has no jurisdiction to try this suit?OPD*
- 10. Whether the plaintiffs have not come to the court with the clean hands, if so its effect?OPD*

11. *Whether the defendants are entitled to the special costs?OPD*

12. *Relief.”*

The respondent-plaintiffs in support of the aforementioned pleadings examined four witnesses and placed on record the revenue record. The appellant-defendants examined two witnesses.

The trial Court on examination of khasra girdawari and jamabandi decreed the suit holding the plaintiffs to be owners to the extent of their share but denied the injunction on the premise that defendants were in possession of the suit land.

In appeal taken by the plaintiffs, the suit has been decreed in toto. The prime reason for decretal of the suit was that it has not been explained under what capacity the status of the appellant-defendants had been shown as tenants in the absence of any *lagan, batai* or rent.

Ms.Nupur Chaudhary, learned counsel appearing on behalf of the appellant-defendants submitted that the documentary evidence placed on record established the long and settled possession as *gair marusi*. It was simpliciter for injunction rightly so the trial Court refused to grant injunction as the defendants were found in possession, though the plaintiffs moved an application under Order 6 Rule 17 of Code of Civil Procedure for amendment of the plaint for incorporating the relief of possession which was dismissed vide order dated 22.5.1990 by the trial Court and therefore, the judgment and decree of the Lower Appellate Court is not sustainable.

Per contra, Mr. Ajay Jain, learned counsel appearing on behalf of the respondent-plaintiffs supported the judgment and decree of the Lower Appellate Court as there is stark difference between a tenant and gair marusi. The tenant is only a tenant. It may be on rent or without rent. The concept of tenancy in a suit claiming declaration under the provisions of Section 5 of Punjab Tenancy Act, 1887 and Sections 9 and 14-A of the Punjab Security of Land Tenure Act, 1953 came to be debated by a coordinate Bench of this Court in **Mauj Khan and others vs. Deen Mohd. and another 2017 (1) RCR civil 700** and as well as by this Court in **RSA No.131 of 1995 titled as Gram Panchayat, Murthal and another Vs Mahinder and others, decided on 24.01.2019**. Paragraphs 18 and 19 of Mauj Khan's case reads as under:-

18. Taking the second question first, as applied in the present context, as that goes to the root of the matter, i.e. as to whether the respondents, as Gair Marusis can even be considered eligible, in view of the revenue entries from 1938 to 1986, to have set up a case to come within the ambit of Section 5 of the Act of 1887.

The learned lower appellate Court, upon a perusal of the evidence, i.e. jamabandies for the said period of 1938 to 1986-87, found that the plaintiffs had been tenants paying land revenue.

A perusal of the said jamabandies, led in evidence before the

Courts below, (photocopies of which have been produced in Court by the learned counsel, not opposed by the other learned counsel), obviously bears out that finding of fact. A perusal of the said jamabandies shows that in Columns No.9 and 11 thereof, other than payment of Rs.1 and 97 paise as “Maal” and Re.1 and 8 paise as “Savai”, nothing more had been paid by the respondents-plaintiffs.

Having been shown to be “Gair Marusi”, cultivating by permission of the land owners, the revenue entry would in effect translate to be that the plaintiffs were paying land revenue as shown above.

The term “Gair Marusi” , though loosely always translated into a tenant at will over a period of time, actually simply refers to a right that is not inherited, with the term “Maurusi/Marusi” meaning inherited, and “Gair” negating 'inherited'.

(Reference: “A glossary of Judicial and Revenue Terms” by H.H. Wilson, 2014 Reprint).

Thus, when applied to tenants, it means a tenant who is not one by inheritance. In the present case, therefore, one who has been given such right by the land owners, “Basreh Malkan Bawajah Darina Kasht.”

Though the term “Darina” is not defined in the aforesaid publication, nor in other dictionaries of revenue terms as are

available, and even learned counsel for the parties could not explain the term, in the opinion of this Court, it eventually makes no difference because the appellants-defendants having admitted the tenancy of the plaintiffs, in the written statement itself, as pointed out by learned counsel for the respondent-plaintiffs, whether such tenancy was inherited by conferment of such right by the landlords, or simply continued to be passed on from the previous generation to the next, by default, would not affect the application of Section 5(2) of the Act of 1887, once it is shown that the plaintiffs continued in such possession, without payment of any rent to the landlords, beyond the land revenue and cesses, etc., for a period of 30 years.

19. As regards the judgments of this Court, cited by learned counsel for the appellants, i.e. in Jug Lal's case and Sukh Ram's case (supra), Jug Lal's case was not dealing with, in any manner, a right under the Tenancy Act of 1887 or the Vesting Act of 1952. It was an appeal in which the plaintiffs had claimed possession of land which came to their share after partition, with the defendants taking a two fold plea; firstly, that they are all co-sharers in the suit land and the partition was not to the knowledge of the defendants and secondly, that in any case they, i.e. the defendants, were tenants "Gair Marusi", and had not forcibly occupied the suit land.

In that context, a co-ordinate Bench of this Court held that firstly, partition was duly proved between the co-sharers and secondly, with no rent having been shown to be paid by the defendants, they could not be even give the status of tenants at will.

Obviously, the facts of the present case are wholly different, inasmuch as the basic criterion for a tenant to claim occupancy rights under the Act of 1887, is that he should not be paying any more rent than the land revenue and cesses, etc. In other words, no actual rent should have been paid to the landlord, over and above the land revenue and cesses. Hence, if the ratio of what was held in Jug Lal's case, despite the context in which it was so held, is applied to any case under the Acts of 1887 and 1952, no tenant would be able to claim occupancy rights, thereby rendering Section 5 of the Act of 1887 virtually otiose.

Such an interpretation, naturally cannot be given, in the opinion of this Court, when a case is brought by tenants seeking occupancy rights on the basis of the criteria laid down in the aforesaid Acts.”

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the Lower Appellate Court could reverse the finding qua injunction in favour of the respondent-plaintiffs keeping in view the fact that defendants were in continuous possession as gair marusi?”

The factum of relief of possession sought to be incorporated by way of amendment was also declined by the trial Court on 22.05.1990. The aforementioned order has attained finality as it was not assailed as per the provisions of Order 43 Rule 1-A CPC.

Be that as it may, remedy for the respondent-plaintiffs was to seek ejectment in accordance with law. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Ram Garib Dass 2016(3) RCR (Civil) 812; 2016 (7) SCC 572**. Paras 12, 16, 17, 18 and 19 of ***Shyam Lal's case*** (supra) are extracted herein below:-

“12. Having noticed the elaborate arguments advanced on behalf of the parties, we may now proceed to deal with the specific question referred to us, as noticed above, and in this regard take note of the questions formulated by the High Court for an answer in the second appeal before it which is in the following terms:

(i) Whether a tenant/lessee of agricultural land can be ordered to be evicted by way of suit for mandatory injunction or the only remedy with the landlord is to seek

eviction under the provisions of the Punjab Security of Land Tenures Act, 1953?

(ii) Whether the lease deed of an agricultural land is admissible in evidence in the absence of registered instrument as required under Section 107 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908?

16. The above is inextricably connected to the issue of determination of the primary question arising, namely, whether the lease between the parties is a fixed term lease or not, a question that would depend for its answer on the terms of the lease deed between the parties. Unfortunately and regrettably the gazette notifications referred to above were not brought to the notice of the High Court leading the High Court to answer the question framed by holding that Section 117 of the Transfer of Property Act makes the provisions of Section 107 inapplicable to an agricultural lease and therefore the terms of the lease can be looked into for a determination of the above question.

17. It is not in dispute that in the present case the appellant tenant remained in possession of the land for the fixed term envisaged in the lease agreement i.e. from 29-5-1996 to 28-5-2005 and even thereafter. As the lease in question was not a registered instrument and as Section 117 of the Transfer of

Property Act has no application to the State of Haryana, in view of the provisions of Sections 17 and 49 of the Registration Act read with Section 107 of the Transfer of Property Act, 1882 the terms of the lease deed would not be admissible in evidence and, therefore, cannot be looked into for the purpose of determining the duration of the lease.

Though in Anthony v. K.C. Ittoop & Sons [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394] it was held that in such a situation an oral lease not exceeding one year can be presumed, it must not be lost sight that in Anthony [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394] the lease in question was one under the Kerala Buildings (Lease and Rent Control) Act, 1965, namely, a non-agricultural lease. In the present case, the lease being admittedly an agricultural lease the same can be deemed to be from year to year in view of the provisions of Section 106 of the Transfer of Property Act.

18. If the lease in the instant case has to be deemed to be a lease from year to year and the terms thereof cannot be looked into to determine the total duration thereof what would follow is that the tenant remained in possession beyond the legally presumptive period of the lease (one year) with the implied consent of the landlord. In the present case, such consent ceased to exist only upon institution of the cross-objection in the suit filed by the tenant, as mentioned earlier. The tenant,

therefore, acquired the status of a tenant holding over or a tenant at will, which would confer on him protection under the 1953 Act requiring the landlord to establish proof of any of the conditions specified in Section 9 of the 1953 Act before being entitled to a decree of eviction.

From the above it would necessarily follow that to be entitled to protection from eviction under the 1953 Act any person claiming such protection has to come within the fold of the expression “tenant” under the 1953 Act read with the relevant provisions of the 1887 Act. Statutory protection would be available only to a statutory tenant, namely, a tenant under the Act. The Punjab Act of 1953 read with the relevant provisions of the 1887 Act do not include a tenant whose lease has expired. Nevertheless, retention/continuance of possession after expiry of the duration of the lease with the consent of the landlord will continue to vest in the erstwhile tenant the same status on the principle of holding over. Such continuance even after expiry of the deemed period of the lease under Section 106 of the Transfer of Property Act, as in the present case, would clothe the occupant with the status of a tenant under the Act in view of Section 116 of the Transfer of Property Act which deals with the consequences of holding over. The operation of Section 116 of the Transfer of Property Act would confer legitimacy to the possession of the tenant even after the

termination or expiration of the deemed period of the lease so as to confer on him a status akin to that of a statutory tenant and hence, protection from eviction as envisaged by the provisions of the 1953 Act.

19. We accordingly answer the question referred in the above terms, and allow this appeal and further set aside the order of the High Court under challenge.”

In view of the aforementioned observations, the judgment and decree of the Lower Appellate Court is not sustainable and hereby set aside and that of trial Court is restored. The Substantial Question of Law, above is answered in favour of the appellant-defendants and against the respondent-plaintiffs.

Resultantly, the regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

April 22, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No