

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

**RSA No.131 of 1995 (O&M)
Date of Decision.24.01.2019**

Gram Panchayat, Murthal and another

...Appellants

Vs

Mahinder and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil, Advocate for
Mr. Deepak Manchanda, Advocate
for the appellant.

Mr. Sushil Sheoran, Advocate
for respondent No.4.

-. -

AMIT RAWAL J.

C.M. No.3499-C of 2018

The application for impleading the Municipal Corporation, Sonapat as appellant in the array of parties, in view of the notification dated 3/6.07.2015 is allowed subject to all just exception and the Municipal Council, Sonapat is ordered to be impleaded as appellant No.2 for the purpose of adjudication of the present appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

Main case

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby suit of the respondents-plaintiffs for conferring ownership under the provisions of Section 5 and 8 of the Punjab Tenancy Act, 1887 (hereinafter called as Act of 1887) read with Section 4 along with

provisions of Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter called as the Act of 1952) has been allowed, at the instance of the appellant-defendant, Gram Panchayat (now Municipal Corporation, Sonapat).

Respondents-plaintiffs instituted the suit claiming that plaintiffs No.2 to 5 being real sons of plaintiff No.1 and plaintiff No.6 being nephew, constituted joint Hindu Family Property and they had been in cultivating possession of the suit property bearing No.1782 min Khatoni No.3629, Rect. and Killa No.159, 160, 125, 124, 123 measuring 144 kanals 10 marlas for the last more than 30 years as tenants at will under the defendant without payment of any rent/*lagan*. Plaintiffs No.2 and 3 were in cultivating possession of agricultural land comprised in Khewat No.1782 min, Khatoni No.3632, Rect. and Killas No.161 measuring 95 kanals 10 marlas whereas plaintiffs No.4 to 6 were in cultivating possession of following khasra numbers:-

Plaintif No.4	Khewat No.1782, Khatoni No.3634, Rect. and Killas No.159, 124 measuring 64 kanals.
Plaintiff No.5	Khewat No.1782, Khatoni No.3632, Rect and Killa Nos.160, 161 measuring 32 kanals
Plaintiff No.6	Khewat No.1782, Khatoni No.3635, Rect and Killa No.159, 160, 123 measuring 48 kanals.

They further relied on jamabandies commencing from the year 1957-1958 to 1980-81 and by proving the continuous possession, relied upon provisions of Section 5(1)(a) read with Section 5(2) of the Act of 1887 for claiming the ownership. It was alleged that the order dated 25.09.1975 of the Assistant Collector 1st Grade, Sonapat ordering ejectment under Section 7 of the Punjab

Village Common Lands Act was not sustainable in the eyes of law being *non est* as the status of the property in dispute was holding over. Even as per the averment of the Gram Panchayat on expiry of the lease, status of the property was holding over. Proceedings under Section 23 were not maintainable in view of the non-determination or determination of the tenancy. On repeated request to the defendants to admit their claim, cause of action accrued to file the suit on 22.11.1985.

The defendant-Gram Panchayat (now Municipal Corporation) opposed the suit and claimed possession of plaintiff No.1 to be unauthorized, thus, order of eviction was passed. He had no right to give to plaintiffs No.2 and 6 as it vested in the Gram Panchayat. It was further averred that plaintiff No.1 had instituted suit under Section 13-A of the Punjab Village Common Lands Act in the Court of Assistant Collector 1st Grade, Sonapat on 10.05.1979 and the same was dismissed on 06.08.1994. An appeal preferred against the same before the Collector was also dismissed on 5.6.1985. Civil writ petition filed in this Court against the order of ejectment was also dismissed in 1985, therefore, the suit was not maintainable and barred by principles of *res judicata*.

The stand of the plaintiffs in all the proceedings had been different and not consistent. There was no relationship of landlord and tenant between the parties. Cultivating possession of the plaintiff No.1 in the suit property as tenants was emphatically denied, much less, that of the plaintiffs No.2 to 6.

Plaintiffs in the replication reiterated the status that of a

tenant by referring to the revenue record. It was alleged that eviction order under Section 7 was passed during the period of emergency by the Deputy Commissioner of Sonapat. They have been in continuous possession since last more than 30 years. Since the year 1950, plaintiffs had been in cultivating possession of the suit land and paid land tax from the year 1975-75 to 1985-86. The lease money of Devi Singh etc. was returned vide resolution No.44 dated 10.01.1976 by the Gram Panchayat and entry in this regard was made in the cash book. Khasra girdawaries were again corrected in the names of plaintiffs vide Rapat Nos.57, 61, 88 dated 13.10.1978, 15.10.1978 and 27.10.1978 respectively. Notice of change of khasra girdawari was issued to the Sarpanch and therefore, there was no disruption of the possession.

On the basis of pleadings, the trial Court framed as many as nine issues including the issue of relief. However, the lower Appellate Court framed additional issue 9-A as well.

Plaintiffs in support of evidence examined PW1 Prem Singh whereas defendant examined DW1 Ram Kishan.

Plaintiffs brought on record following documentary evidence:-

“Ex.P1 to Ex.P10. Copies of jamabandies for the years 1948, 1961-62, 1975-76, 1970-71, 1980-81, 1980-81, 1980-81 respectively.

Ex.P11. Copy of khasra girdawari for the year 1950-54, 1954-57.

Ex.P12 Copy of jamabandi for the year 1945-46.

Ex.P13 Copy of khasra girdawari for the year 1959-62.

Ex.P14, P15 Copy of khasra girdawari for the year 1966 to 1970.

Ex.P16 to P19 Copy of khasra girdawari for the years 1970 to 1972, 1972 to 1976, 1976-77, 1981-82 to 1984-85 respectively.

<i>Ex.P20</i>	<i>Copy of application under Section 7 of the Punjab Village Common Lands Act dated 24.7.1975.</i>
<i>Ex.P21</i>	<i>Copy of order dated 15.1.80 of ACIG.</i>
<i>Ex.P22</i>	<i>Certificate of Patwari of village.</i>
<i>Ex.P23</i>	<i>Copy of report roznamcha for the year 1975-76.</i>
<i>Ex.P24 to P29</i>	<i>Copies of nehri girdwari and copy of order dated 6.8.94.</i>

Whereas the defendants brought on record following documents:-

<i>Ex.D1</i>	<i>Copy of resolution dated 5.4.1989.</i>
<i>Ex.D2</i>	<i>Copy of order dated 25.9.75 of A.C. 1st Grade Sonapat under S.7 of the Punjab Village Common Lands Act.</i>
<i>Ex.D3</i>	<i>Mark 'A' statement of Girdhari predecessor of the appellants.</i>
<i>Ex.D4</i>	<i>Order of the Hon'ble High Court of Punjab and Haryana dated 20.1.1978.</i>
<i>Ex.D5</i>	<i>Order of the Hon'ble High Court of Punjab and Haryana dated 17.9.1985.</i>
<i>Ex.D6</i>	<i>Copy of order dated 22.5.1986 of Shri Raj Kumar Sub Judge, Sonapat.</i>
<i>Ex.D7</i>	<i>Copy of kalandra dated 29.11.1986 under Section 145 Cr.P.C.</i>
<i>Ex.D8</i>	<i>Copy of order dated 30.12.1986 passed by Executive Magistrate, Sonapat.</i>
<i>Ex.D9</i>	<i>Decree sheet.</i>
<i>Ex.DW2/A</i>	<i>Copy of lease deed register."</i>

On preponderance of evidence, the trial Court dismissed the suit as it did not have jurisdiction to try the suit claiming declaration of occupancy tenants as owners being not maintainable but the lower Appellate Court reversed the finding of the trial Court and decreed the suit and conferred status of the plaintiffs.

Mr. Sunil for Mr. Deepak Manchanda, learned counsel appearing on behalf of the appellant in support of the grounds taken in the memorandum of appeal raised following submissions:-

(i) The appeal was admitted by this Court vide order dated 4.4.1995 and following order was passed:-

“Admitted.

Stay alienation.”

(ii) The finding of the lower Appellate Court is manifestly wrong, unwarranted and not sustainable in the eyes of law. The trial Court rightly held that the order dated 25.09.1975 of Assistant Collector 1st Grade, Sonapat passed under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (Ex.D-2) was valid and could not have been challenged in Civil Court. The plaintiff Girdhari and his sons filed civil writ petition No.7403 of 1975 challenging the aforementioned order, which was dismissed vide order dated 20.01.1978 (Ex.D4).

(iii) Once the plaintiff was unsuccessful in laying challenge to the ownership of the Gram Panchayat in a suit/proceedings initiated under Section 13-A of 1961 Act, present suit claiming declaration of ownership being occupancy tenants under the provisions of Act of 1887 was hit by doctrine akin to *res judicata*.

(iv) Plaintiffs had been taking different stands in all the suits/proceedings in order to grab the suit land, as in the proceedings under Section 7 had taken the plea of cultivation of land as co-sharer. There was no relationship of landlord and tenant.

(v) The lower Appellate Court abdicated in not referring to the decision dated 17.09.1985 rendered in the proceedings under Section 13-A (Ex.D-5) nor considered the copy of the lease register Ex.DW2/A, Ex.P5 copy of jamabandi for the year 1975-76 and statement of Girdhari Ex.D3 wherein he had undertaken to hand over the possession, in correct perspective.

(vi) Even if the plaintiffs are gair marusi tenants, they cannot claim ownership, in view of the finding rendered by single bench of this Court in **Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others 2009(4) RCR (Civil) 385.**

(vii) There was no evidence on the file that the suit land was given to some other person on lease. Entry in the jamabandi Ex.P5 for the year 1975-76 did not establish the continuous possession of the plaintiffs. The pleading in the plaint qua ownership by adverse possession was contradictory as no tenant can plead ownership. Even otherwise, such plea in affirmative cannot be taken, in view of the law laid down by Hon'ble Supreme Court in **Gurudwara Sahib v. Gram Panchayat Village Sirthala and another 2013 (4) R.C.R. (Civil) 703.**

Per contra, Mr. Sheoran, learned counsel appearing on behalf of the respondents-plaintiffs submitted that proceedings under Section 7 of the 1961 Act were bad and without jurisdiction as jamabandi reflected status of the plaintiffs as tenants and the remedy,

if any, was to seek eviction as per the provisions of Section 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter called as the Act of 1953). In support of aforementioned submissions, relied upon the ratio decidendi culled out by Hon'ble Supreme Court in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass 2016 (3) RCR (Civil) 812; (2016) 7 SCC 572.**

It was next contended that provisions of Section 5(2) of the Act of 1887 and as per definition Section 2 (f) and provisions of Section 3 of the Act of 1952, suit for declaration of tenants claiming occupancy rights held to be matured in full ownership and relied upon judgment rendered by this Court in **Mauj Khan and others Vs. Deen Mohd. and another 2017(1) RCR (Civil) 700** whereby relying upon the provisions of the Act and as well as definition of *marusi* and *gair marusi*, the plea of the tenant was upheld. Even provisions of Chapter 7 of the Punjab Land Records Manual were also adverted to.

He buttressed his arguments by submitting that the ratio decidendi culled out by this Court in **Jaleb Khan's** case would not be applicable as *gair marusi* is an unauthorized tenant and cannot be termed as occupant tenant. Reference was also laid to judgments rendered by this Court in **Kailash Wati through LRs Vs. The Financial Commissioner, Haryana and others 2017(1) PLJ 526; Shiv Charan Vs. Financial Commissioner, Haryana and others 2004(4) RCR (Civil) 543** and **Shivala Vakya Gram Rania Vs. Municipal Committee 2018(2) RCR (Civil) 171.**

The trial Court abdicated in dismissing the suit as Full Bench of this Court in **Shiv Charan's case** (supra) held that Civil

Court would have jurisdiction to entertain a suit where declaration by tenant claiming ownership by way of occupancy rights under the provisions of Act of 1887, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of the courts below, judgments cited at bar and of the view that there is no force and merit in the submissions of learned counsel appearing of the appellant. It would be apt to reproduce Section 5, 6 and 8 of the Act of 1887, Sections 2(d), (f) and Section 3 of the Act of 1953 and Sections 9 and 14-A of the Punjab Security of Land Tenures Act, 1953:-

“Sections 5, 6 and 8 of Punjab Tenancy Act, 1887.

“5. Tenants having right of occupancy.- 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 he ceased to be landowner 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 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 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 denotes also relationship by adoption, including therein the customary appointment of any heir and relationship, by the usage of a religious community.

6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.- *A tenant recorded in a record of rights sanctioned by the State Government before the twenty-first day of October, 1868, as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act.*

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.*

Sections 2(d) (f) and Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

“2.(d) “land”, “land revenue” and ‘rent’ have the meanings respectively assigned to them in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887);

xxx xxx xxx

(f) “occupancy tenant” means a tenant who, immediately

before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.

3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.-

Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-

(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;

(d) the occupancy tenant shall be liable to pay and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.”

Sections 9 and 14-A of the Punjab Security of Land Tenures Act, 1953:-

“9. Liability of the tenant to be ejected.—(1) Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject the tenant except when such tenant—

(i) is a tenant on the area reserved under this Act or is a tenant of a small landowner, or

(ii) fails to pay rent regularly without sufficient cause, or

(iii) is in arrears of rent at the commencement of this Act, or

(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate, or

(v) has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it, or

(vi) has sublet the tenancy or a part thereof, provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part, or

(vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the landowner.

Explanation.—For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

(2) Notwithstanding anything contained hereinbefore a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area:

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option if the area of his tenancy under the landowner concerned is in excess of the area from which he can be ejected by the said landowner:

Provided further that if the tenant holds land of several landowners and more than one landowner seeks his ejectment, the right to ejectment shall be exercised in the order in which the applications have been made or suits have been filed by the landowners concerned, and in case of simultaneous applications or suits the priority for ejectment

shall commence serially from the smallest landowner.

Explanation.—Where a tenant holds land jointly with other tenants, only his share in the joint tenancy shall be taken into account in computing the area held by him.”

“14-A. Procedure for ejectment and recovery of arrears of rent, etc.—*Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of Section 9-A—*

(i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (16 of 1887), shall not be affected;

Provided that if the tenant makes payment of arrears of rent and interest, to be calculated by the Assistant Collector, First Grade, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by Assistant Collector, First Grade, either on the day of first hearing or within fifteen days from the date of such hearing, he shall not be ejected;

(ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed to the tenant either to deposit the rent or value thereof, if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii)(a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;

(b) on receiving such application, the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both, within 60 days of the receipt of the notice.

Paras 12, 16, 17, 18 and 19 of the ratio decidendi culled

out by Hon’ble Supreme Court in **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."

Revenue record referred to above established the status of the plaintiffs as of tenants. It is case of the gram panchayat land given on lease to the plaintiffs i.e. sons of Girdhari, who did not vacate the premises. In such circumstances, could not have taken the aid of the eviction order dated 25.09.1975 passed under Section 7 of the Act of 1961 as the said proceedings do not apply, in view of the fact that the entry of the plaintiffs in the revenue record was of tenants without payment of rent, which would be a tenant as per the

provisions of Section 4 and 5 of the 1887 Act.

In view of Ex.DW1/A, the Gram Panchayat admitted the plaintiffs to be lessees. In such circumstances, status of the plaintiffs under Section 116 of the Transfer of Property Act was of holding over, thus, provisions of Section 5 and 6 of the Act of 1887 were fulfilled. A bare perusal of Section 5 of the Act of 1887 provides that long and settled cultivating possession of the agricultural land is also required to be established to claim ownership as occupancy tenants and this was the intention of the legislature. The Gram Panchayat did not take any steps to seek eviction of the plaintiffs by filing any counter-claim, since as per the revenue records, plaintiffs were found in possession as *gair marusi*.

Khasra girdawaries Ex.P11, P13, P14 to P19 commencing from 1950-54 to 1984-85 established the possession of the plaintiffs and which was endorsed and acknowledged by the Patwari as per certificate Ex.P22 and rapat roznamacha Ex.P23. DW1 Sarpanch of the village admitted possession of the plaintiffs since 1950. The trial Court did not advert to the revenue record and therefore, the finding was based upon surmises and conjectures.

A co-ordinate bench of this Court while interpreting the aforementioned provisions in **Mauj Khan's case** (supra) held 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 Re.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.”

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court being the last court of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 24, 2019
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No