

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3672 of 2011 (O&M)

Date of decision: 29.03.2019

Chhaju Singh and others

..... Appellants

Versus

Lakhi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kulbhushan Sharma, Advocate
for the appellants.

Mr. M.K. Mittal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants namely owners are in appeal against the judgment passed by the First Appellate Court.

The question which needs consideration is:

“Whether the plaintiffs were occupancy tenants and therefore, become owner in view of the provisions of Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952?”

It is not disputed that Section 5 Sub-Section 2 requires a tenant to prove that he has continuously occupied the land for 30 years and paid no rent therefore, beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon. Section 5 of the Punjab Tenancy Act, 1887 is extracted as under:-

“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 landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has since ceased to be land-owner 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 the 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 therefore 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 had 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.”

Learned counsel for the respondents-plaintiffs does not dispute that as per revenue record, predecessor of the plaintiffs are recorded as 'gair marusi' tenants on a land measuring 33 kanals 4 marlas at rent of Rs.25/- per year. Later on, the entry was changed to payment of share of crop to the

extent of 1/3rd (i.e. batai tihai). The literal meaning of word 'gair marusi' is non-occupancy because gair means non and marusi means occupancy. Still further, no evidence has been brought to prove that the amount of the land revenue and the cess or rates paid, if any, were equivalent to the rent payable or rent paid. In view of the aforesaid, the question which arises is whether in absence of any cogent evidence to prove that the plaintiffs fulfill the requirements of Section 5(2) of the Punjab Tenancy Act, 1882, were the Courts below were correct in granting declaration that the plaintiffs have become owner. Divesting of someone of the property is to be established absolutely. The Court cannot grant declaration unless the plaintiffs establish by preponderance of evidence that they fulfill the criteria.

This issue has been deliberated by the Court in the case of Tara Chand Vs. Bihari Lal and others, 2018(1) RCR (Civil) 443 and it has been declared that unless a tenant fulfills the criteria as laid down in the Punjab Tenancy Act, the Court cannot grant declaration. For the detailed reasons recorded in the aforesaid judgment, the question which has been framed is answered in favour of the appellants.

Accordingly, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

Regular Second Appeal is allowed.

29.03.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No