

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

RSA No.683 of 2012 (O&M)

Date of decision : 05.02.2019

Hoshiar Singh

...Appellant

Versus

Hari Chand (deceased) through his LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Singal, Advocate for the appellant.

Mr. Sushil Jain, Advocate for
Mr. Vikas Lochab, Advocate for respondent Nos.11 to 15.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Learned trial Court dismissed the suit in entirety whereas learned First Appellate Court has granted the limited relief to the appellant by passing a decree for injunction against defendant Nos.1 and 2 from forcible dispossession.

The plaintiff claiming to be the successor of late Sh. Shera and Boda who died as childless bachelor, claimed that he is occupancy tenant since long and, therefore, he has become owner of the property on conferment of title to the occupancy tenants by the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

Defendants contested the suit and pleaded that the plaintiff was not occupancy tenant. It was further pleaded that the defendants have surrendered their rights in favour of remaining defendants except defendant Nos.1 and 2 by writing dated 22.01.2008 and affidavit dated 12.02.2008 where all the three brothers have admitted the receipt of ₹42,00,000/- and relinquished their rights.

Both the Courts below after examining the evidence have found that the plaintiff was never occupancy tenant rather in the revenue record, he was recorded as gair marusi tenant which literally means non-occupancy.

Learned counsel for the appellant submitted that the affidavit and the receipt Ex.D1 and Ex.D2 are not admissible in evidence being unregistered. He further submitted that the possession of the plaintiff is proved since 1956-57.

As regards first argument, once the plaintiff had no right, title or interest in the property, therefore, the receipt and the affidavit cannot be taken as a document transferring the right in the immovable property which may require the document to be compulsorily registrable. Execution of the aforesaid document has been proved by leading cogent evidence. Still further, the plaintiff was never occupancy tenant as it is his pleaded case that he was inducted tenant on payment of *chakota saal tamam* of ₹135/- per year since 1956-57. As per the provisions of the Punjab Tenancy Act, the right of occupancy is provided in Chapter 2 which envisages various eventualities under which right of occupancy can be claimed.

Learned counsel for the appellant could not justify as to in which Clause or provision the case of the appellant falls. He submitted that

the possession of the plaintiff is proved from the year 1956-57. Section 9 of the Punjab Tenancy Act, clearly provides that the right of occupancy cannot be acquired by mere lapse of time. There are certain situation in which right of occupancy can be claimed. Since, the plaintiff has failed to prove that fact, therefore, the Courts below have rightly declined to grant declaration to the plaintiff.

In view of what has been observed above, the present Regular Second Appeal is dismissed.

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

05.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No