

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA No.5121 of 2014 (O&M)

Date of decision: 01.04.2019

M/s B.T. Developers Pvt. Ltd.

..... Appellant

Versus

Gokal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.S. Guron, Advocate for the appellant.

Mr. Navneet Singh, Advocate, for
Mr. Rajinder Chokkar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.3-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit for declaration that the plaintiffs have become owner of the property as per the provisions of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 (for short 'Act of 1952'). Both the Courts have held that the plaintiffs or their predecessor have become occupancy tenants under Section 5(2) of the Punjab Tenancy Act, 1887 and consequently, owner in view of the Act of 1952. 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.”

It is apparent that Sub-Section 2 of Section 5 requires that tenant is to establish that he has continuously occupied the land for a period of 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. In the present case, both the Courts have recorded a finding that predecessor of the plaintiffs was recorded as owner on payment of chakota (lease money) of

Rs.5/- per acre per year and the lease money has never been increased.

However, trial Court while recording a finding with regard to second part of the requirement as required under the Act, has recorded as under:-

“That apart, it has also not come in the evidence that the plaintiff paid the chokata beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon. Perusal of revenue records does not reflect that the plaintiff paid chokata beyond the land revenue of any cesses.”

It is apparent that the Courts have not recorded any finding with regard to what was the amount of land revenue and the rates and cesses for the time being chargeable thereon and how it was equivalent to the amount of chakota payable.

Once some one is to be divesting of the title in accordance with the statutory provision, it is mandatory for the Court to record a positive finding on preponderance of evidence after examining the record thoroughly. From the finding which has been recorded by the trial Court, it is apparent that the requirements of the Act have not been fulfilled. Still further, learned First Appellate Court does not also advert itself to the second requirement of the Act i.e. that the amount of lease money is equivalent to the amount of land revenue, the rates and cesses for the time being chargeable thereon.

Hence, the judgments passed by the Courts below are set aside. The case is remitted back to the trial Court to re-decide the suit.

With these observations, the appeal is disposed of.

The pending misc. application, if any, shall stand disposed of.

Parties through their counsel are directed to appear before the trial Court on 22.04.2019.

01.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No