

RSA No. 2935 of 2018 (O&M)

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

**RSA No. 2935 of 2018 (O&M)
Date of decision: 05.11.2019**

Ghasi Ram

... Appellant

Versus

Jagmohan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Jainainder Saini, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 10.3.2015 and as even the appeal preferred against the said decree failed and was dismissed on 5.8.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that he was owner in possession of the suit property measuring 16 kanals 3 marlas, comprised in specific khasra numbers as set out in the cause title of the plaint, situated in village Ludas, District Hisar, for he had acquired occupancy rights therein under Sections 5 and 8 of the Punjab Tenancy Act and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

In brief, his case was that he and his forefathers have been cultivating the suit land for the last over 100 years as tenants on payment of basshare parta lagan. His great grand father, namely Sh. Mai Dhan, who had reclaimed the suit property and made it cultivable, was assured by defendant No.1 and his great grandfather that he would never be evicted. Post death of Mai Dhan, his son, namely Giana, and after the death of Giana, his son, Bhag Singh, cultivated the suit property. Post Bhag Singh went missing, plaintiff had been cultivating the suit property on payment of nominal rent. Even though defendant No.1 was asked several times to admit the rights that plaintiff had acquired in the suit property and his claim of being an owner, but to no avail. Thus the suit.

For defendant No.1 never chose to appear despite service, he was proceeded against ex parte. However, on an application moved by defendants No. 2 to 6 under Order I Rule 10 of the Code of Civil Procedure, they were arrayed as such and filed their joint written statement. Significantly, defendants No. 2 to 4 also happened to be sons of Bhag Singh, and defendants No. 5 and 6 were his grand children. Although they admitted that suit property was cultivated by their forefathers, but at present defendants No. 2 to 6 were in cultivating possession. Plaintiff had no right, title or interest therein. In fact, defendants No. 2 to 6 had acquired rights in terms of Section 5 and 8 of the Punjab Tenancy Act, 1887 ('the Act', for short), and were entitled to be declared owners of the suit land. Accordingly, they filed a counter-claim seeking declaration that they were owners in possession of the suit land, and even sought rectification of the revenue entries in their favour.

Upon consideration of the matter in issue and evidence on

record, both the courts concurrently concluded that in terms of Section 5(2) of the Act to claim occupancy rights, it was required to be established: ***i) a tenant proves that he has continuously occupied the land for 30 years, and ii) he never paid rent beyond the land revenue, the rates and cess chargeable thereupon.*** Whereas, Section 8 of the Act postulates that 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. Likewise, Section 9 of the Act envisages that right of occupancy is not to be acquired by a tenant by mere lapse of time.

The specific case set out by the plaintiff was that suit property was lying barren, unlevelled and was reclaimed by his great grandfather, namely Mai Dhan, who was inducted as tenant by the predecessors-in-interest of defendant No.1 about 100 years ago. He was assured that he would never be evicted, and would only pay lagan. Though plaintiff appeared as his own witness (PW1), but failed to prove that pursuant to any understanding or oral agreement between his forefathers and predecessor-in-interest of defendant No.1, former were assured that they would never be evicted from the suit property. Further, this Court in **Muni Ram Vs. Phullia and Lalu, 1974 PLJ 369**, had observed that intention of the landlord not to eject the tenant forever is to be deciphered or seen at the time of inception of tenancy and mere length of possession would not entitle a tenant to claim occupancy rights in the land in his possession as tenant. Thus, merely on the basis of long possession, it could neither be inferred or was implied that predecessor-in-interest of defendant No.1 made any promise to the forefathers of the plaintiff that they would never be evicted from the suit property. Even the plea that suit property, to begin with, was barren also

remained unproved. Rather, the evidence on record showed that suit property was depicted as *Nehri/Tal*. Similarly, the plea that his forefathers had been paying nominal rent, and therefore, he was entitled to claim occupancy rights also remained unsubstantiated for lack of evidence. Further, entries in column No. 10 of the jamabandi for the year 1969-70, showed that father of the plaintiff, namely Bhag Singh, was paying batai tehai to the landowners. Therefore, it was proved that no nominal rent was ever paid by the plaintiff or his forefathers to the landowners. So was the position even in the latest jamabandi (Ex.P2). Significantly, it was not the case of the plaintiff either that entries recorded in the said jamabandies were wrong. Thus, ex facie, the plaintiff failed to satisfy the requirements of provisions of Section 5 of the Act, which postulates that tenant should not have paid rent beyond the land revenue. Hence, plaintiff was not entitled to the declaration prayed for.

Likewise, the counter-claim filed by defendants No. 2 to 6 that incorrect entries were got incorporated in the revenue records by the plaintiff, pursuant to an ex parte decree dated 18.1.2006, would hardly advance their claim. A perusal of the judgment dated 18.1.2006 revealed that suit filed by the plaintiff, seeking a decree for mandatory injunction, was decreed ex parte against defendants No. 2 to 6. It is not disputed either that neither any appeal nor any application seeking setting aside of the said decree was ever preferred by defendants No. 2 to 6. No application seeking correction in the records of rights was moved either. Thus, the position reflected in the revenue records carried a presumption of truth unless rectified. Even otherwise, defendants No. 2 to 6 failed to prove their possession over the suit land. Therefore, the only and the inevitable

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conclusion that could be reached: counter-claim filed by defendants No. 2 to 6 was liable to be dismissed.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 05, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO