

RSA-1399-2016(O&M) 1

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

**RSA-1399-2016(O&M)
Date of decision: 13.03.2020**

**Jagdish @ Jagdish Parshad and others
.....Appellants**

Versus

**Gram Panchayat and others
.....Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Amit Jain, Advocate for the appellants

None for the respondents

ANIL KSHETARPAL, J.

The plaintiffs-appellants have filed the present Regular Second Appeal against concurrent findings of fact arrived at by the Courts below while dismissing the suit filed for grant of decree of declaration that the plaintiffs have become owners in possession by virtue of Section 3 of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1951 on acquisition of occupancy rights under Section 5 to 8 of the Punjab Tenancy Act, 1887 being in continuous possession for a period of more than 30 years as tenants on payment of nominal lagan with respect to land measuring 24 kanals i.e 3 acres.

The plaintiffs claimed that their ancestor Jawahara and after his death, Dhanna s/o Jawahara cultivated the suit land alongwith his brothers Moti Ram and Surja Ram as tenants. Dhanna Ram and Surja Ram died unmarried and after the death of Moti Ram, his son Bhadar

came in possession of suit land. Bhadar s/o Moti Ram was in continuous possession thereof on payment of Rs.15/- as lagan for more than 60-70 years. The defendant no.1- Gram Panchayat contested the suit by asserting that entry in the revenue record showing the ancestors of the plaintiffs to be in cultivating possession of the suit land on payment of lagan are totally wrong. It was further asserted that actually Mani Ram s/o Jiram is in illegal possession of the suit land and the Gram Panchayat has been wanting to eject him from the same. After framing of the issues, parties were permitted to lead evidence and thereafter, both the Courts as noticed above dismissed the suit filed by the plaintiffs.

This Court has heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants submitted that as per the revenue record, it is established on record that the plaintiffs or their predecessor are recorded in possession in 1964-65, Jamabandi Ex.P-14. He further contended that the possession of the plaintiffs or their predecessors is recorded on payment of Rs. 15/- as lagan. He, hence, submitted that the plaintiffs have fulfilled the requirement of continuous possession for a period of 30 years as laid down under sub section 2 of Section 5 of Punjab Tenancy Act, 1887 and therefore, have become owner as per the provisions of the 1952 Act.

This Court has considered the submissions of the learned counsel for the appellants and find no substance therein on account of more than one reasons hereinafter discussed:-

(i) The defendant no.1-Gram Panchayat is a jurist person, created by a statute. Property is recorded in the revenue record as shamlat deh. Tenancy is created by a bilateral contract between the parties. The plaintiffs have failed to prove as to when that bilateral contract, even if oral, was entered into. The Gram Panchayat can lease out the property in accordance with the statutory provisions. Previously, the working of Gram Panchayats was governed by the Punjab Gram Panchayat Act, 1952 which was later on repealed and substituted by the Haryana Panchayati Raj Act, 1994. Both these Acts regulate the working of the Gram Panchayat including lease of the property which vests in the Gram Panchayat. In the absence of evidence of how the tenancy came into existence which can only be through a resolution because defendant no.1 is a juristic person, a multi member body, it would not be appropriate to hold that the plaintiffs or their predecessor were tenants of the land in dispute under the Gram Panchayat.

(ii) The property is recorded as shamlat deh in the revenue record. The land described as shamlat deh in the revenue record is governed by the provisions of the Punjab Village Common Lands (Regulation) Act, 1961. Section 4 (3) (ii) deals with vesting of land in the Gram Panchayat. On careful reading of clause (ii), it is apparent that a person who claims that a particular property does not vest in Gram Panchayat is required to prove that he or they are in such cultivating possession of the land for a period of more than 12 years on such commencement without payment of rent. Such commencement is with reference to Punjab Village Common Lands (Regulation) Act, 1953. In

other words, the plaintiffs were required to prove that they are in cultivating possession of the shamlat deh land 12 years before the 1953 Act came into force. In the present case, the oldest jamabandi which has been produced is of the year 1964-65.

(iii) Still further, it is proved that the plaintiffs are not in cultivating possession of the land as rightly found by both the Courts below. The plaintiff no.1 has appeared in evidence. He has admitted that he is running a shop of Goldsmith at Bhadar which is in the State of Rajasthan and visits village Motakhera, where the land is situated, only occasionally. He admitted that he is having voter I-card and ration card at Bhadar, Rajasthan. Still further, entry in the revenue record is also proved to be wrong because Dhanna is recorded to be in possession of the property in the jamabandis for the year 1989-90, 1994-95, 1999-2000 and 2004-05 whereas Dhanna had died on 07.06.1986. Thus, the plaintiffs are also not proved to be in possession. The entry in the revenue record no doubt carries a presumption of correctness which is rebuttable. It is established that the revenue entries are in favour of a dead person. Hence, the plaintiff is not proved to be in actual physical possession of the land.

(iv) Still further, Section 5 of the Punjab Tenancy Act results in divesting of title from the owner. Section 5 has to be strictly construed and interpreted because it would result in taking away ownership rights from one person to another. In such circumstances, the Court while examining the requirement has come to a definite conclusion that all the requirements stand fulfilled. On a careful reading of sub section 2 of

Section 5, it is apparent that a tenant is required to prove that he has continuously occupied the land for last 30 years and paid no rent beyond the amount of land revenue thereof, and the rates and cesses for the time being chargeable thereon. The plaintiffs have failed to prove that they are tenants. The entry in their favour is only Gair Marusi which itself is not sufficient to prove tenancy. Such entry has to be read with entry in column no.9 of the jamabandi. In column no. 9, there is no entry of payment of rent. Still, no evidence has been produced to prove that the plaintiffs ever paid any rent to the Gram Panchayat. Further, the entry is only regarding the payment of lagan i.e Rs.15/-. Lagan is land revenue, chargeable by the Government. Requirement as per sub section 2 of Section 5 is that the tenant has to prove that he paid no rent beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon. In other words, the rent paid to the landlord has to be proved which should not be beyond the land revenue and the rates and cesses chargeable thereon. In the present case, the plaintiffs have not produced any evidence to prove that they paid any rent which may be equivalent to the amount of land revenue and rates and cesses chargeable thereon to the Gram Panchayat.

Keeping in view the aforesaid discussion, this Court is not inclined to interfere with the concurrent findings of fact arrived at by the Courts below. Hence, the appeal is dismissed.

13.03.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No