

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

**RSA-1585-2020 (O&M)
Decided on:-18.08.2022**

Om Parkash and others

....Appellants..

vs.

Pardeep Kumar and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Saurabh Dalal, Advocate
for the appellants.

HARKESH MANUJA J.

CM-5126-C-2020

Prayer in this application is for condonation of delay of 698 days in refiling the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, same is allowed and delay of 698 days in refiling the appeal is condoned.

CM-5127-C-2020

Prayer in this application is for condonation of delay of 46 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, same is allowed and delay of 46 days in filing the appeal is condoned.

Allowed as prayed for.

CM-5128-C-2020

Prayer in this application is for impleading the legal

representatives of appellant No.4-Beermati (deceased).

For the reasons mentioned in the application, which is duly supported by an affidavit, same is allowed and person mentioned in para No.3 is ordered to be impleaded as her legal representative in the present appeal.

Main case

Appellants-defendants No.1 to 4 are in second appeal, challenging the judgments and decrees dated 17.11.2016 and 11.07.2018, whereby a suit for declaration along with permanent injunction filed at the instance of respondents No.1 to 5-plaintiffs, has been decreed.

2. In brief, plaintiffs-respondents No.1 to 5 filed a suit for declaration claiming themselves to be owner and in cultivating possession of the suit land along with proforma defendants as their co-owners. The plaintiffs further claimed that the revenue entries in the name of Mam Chand i.e. the predecessor-in-interest of appellants-defendants No.1 to 4 being in the name of dead person were illegal as Mam Chand died 25/30 years ago. Accordingly, the plaintiffs-respondents No.1 to 5 sought declaration qua the revenue entries as well as for grant of permanent injunction, so as to restrain appellants/defendants No.1 to 4 from interfering in their peaceful possession over the suit land. In response, the appellants herein (defendants No.1 to 4) appeared and filed their joint written statement, denying the factum of ownership of plaintiffs-respondents No.1 to 5 over the suit property. It was further contended that defendant No.1 to 4 were in cultivating possession of the land in question as “gair marusi” tenant under Azad, Anil sons of Chander Singh and Ashok Kumar s/o of Satbir and submitted that Azad, Anil and Ashok previously filed a suit for

permanent injunction against appellants-defendants No.1 to 4, which was dismissed by the trial court as well as in appeal. It was further contended that Azad, Anil and Ashok sold land in favour of respondent No.5. Learned trial court, vide its judgment and decree dated 17.11.2016, decreed the suit filed by plaintiffs-respondents holding them to be owner in possession of the suit property by further recording that the revenue entries in the name of appellants-defendants No.1 to 4 as “gair marusi” are liable to be set aside. Learned trial court also restrained defendants from interfering in the peaceful possession of plaintiffs as well as that of proforma-defendants over the suit property.

3. Aggrieved against the judgment and decree dated 17.11.2016, defendants No.1 to 4 filed first appeal, however, the same was also dismissed by the court of learned Additional District Judge, Rohtak, thereby maintaining the judgment and decree passed by learned trial court.

4. Learned counsel for the appellants has contended that the courts below have gone wrong while discarding the revenue entries in the shape of “khasra girdawari”, which recorded Mam Chand to be in possession of the suit property as “gair marusi”. It has been further contended that in view of the revenue record showing, the father of the appellants to be in possession of the suit property, the suit filed by the plaintiffs-respondents No.1 to 5 should have been dismissed.

5. I have heard, learned counsel for the appellants and have perused the paper book.

6. The main reliance having been placed upon by the appellants is on the revenue entries in the name of their deceased father Mam Chand, wherein, he has been shown to be as “gair marusi” tenant over the suit land.

There is no dispute about the fact that Mam Chand died long ago and the entries continued in his name, even after his death showing him to be as “gair marusi”. As Mam Chand expired long back, the revenue entries, which continued in his name, as a dead person have no value in the eyes of law, as such, cannot be relied upon, so as to establish the possession of the appellants over the suit land. In this regard, reference can be made to the judgment of this Court in **Mani Ram and others Vs. Inder Singh and others**, 2020 (2) CCC 486 and for reference, para 7 of the same is reproduced hereunder:-

“7. Appellants have claimed their possession over suit land through their father, who admittedly died long ago around 30 years back from the date of filing of the suit. However, revenue entries continued in his favour showing 2 of 5 RSA No.4107 of 2018 (O&M) his possession, which fact in itself proves that the revenue entries in favour of a dead person from any angle were stray entries. Therefore, the appellants cannot be permitted to take any help of those stray revenue entries.”

7. In addition, it may also be pointed out here that in the absence of any finding having been recorded by the courts below regarding payment of rent by the appellants to the plaintiffs-respondents, the appellants cannot be held to be successor in possession of their father as “gair marusi”, which even otherwise, is not an inheritable right. The said proposition of law has been laid down by this Court in various judgments and reference is made to the judgment of this Court in **Parbhat and others Vs. Surender Singh and others**, RSA No.5057-2016, decided on 08.01.2018 and relevant part of the same is reproduced as under:-

“Gair Marusi tenants are the tenants at will of the land owners. However, but for the right of inheritance available under the statutory provisions, such tenants

were not having any right of inheritance of the tenancy. The word 'Marusi' means occupancy (source-Punjab Settlement Manual 1899 by Douie's), whereas Gair means "non. Therefore, the literal meaning of Gair Marusi is non occupancy. Such term is used for the tenants at the wish of the land owners.”

8. In view of the findings recorded herein above, I find no merit in the appeal and the same is therefore dismissed with no order as to costs.

(HARKESH MANUJA)
JUDGE

18.08.2022

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No