

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2602 of 2007(O&M)

Date of decision:23.05.2022

Jai Parkash

...Appellant

Versus

Itwari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Kumar, Advocate, for the appellant.

Mr. Sanjiv Gupta, Advocate, for the respondents.

ANIL KSHETARPAL, J.

BRIEF FACTS OF THE CASE

1.1. Defendant No.2 assails the correctness of the judgment and decree passed by the Courts below while decreeing the plaintiff's suit for grant of decree of declaration to the effect that the plaintiffs have become owners of the suit property in view of Section 8 of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the 1887 Act') read with the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as 'the 1952 Act').

1.2. On 19.04.2010, while admitting the Regular Second Appeal, the following substantial questions of law were framed for adjudication:-

“i) *Whether the findings recorded by the Courts below on the question that the plaintiffs have acquired occupancy rights under Section 8 of Punjab Tenancy Act by the operation of the provisions of Punjab Occupancy Tenants (vesting of Proprietary rights) Act, 1952 and they become owners in possession of the suit land are vitiated having*

been based upon no evidence in this regard?

- ii) Whether the concept of adoption has any application in Muslim Law?*
- iii) Whether the present suit, which has also been filed in the representative capacity, was competent and maintainable in the present form?*
- iv) As to whether the plaintiffs were occupancy tenants is a matter cognizable by the revenue court under Section 77(3)(d) of Punjab Tenancy Act. Whether the jurisdiction of the civil court is barred for entertaining the suit filed by the plaintiffs?*

1.3. To comprehend the controversy involved in the present case, the relevant facts are required to be noticed.

1.4. Plaintiffs-Shri Itwari and others claim that they have become owners in possession of the suit land in view of the provisions of the 1952 Act read with Section 8 of the 1887 Act. It is their case that they are in the cultivating possession of the suit land measuring 32 kanals and 17 marlas on the payment of Rs.42/- per annum. The defendants, who were the owners of the considerable area of land in the several villages, invited the predecessors-in-interest of the plaintiffs, to cultivate the land as tenants over 50 years ago on a payment of nominal cash as rent while promising them tenancy in perpetuity.

1.5. The defendants, while contesting the suit, submitted that the plaintiffs are neither tenants nor in possession of the suit land.

1.6. The trial Court, on appreciation of pleadings, framed the following issues:-

- “1. *Whether the plaintiffs are in cultivating possession as tenants subjected to payment of Rs.42/- per cent per annum as rent under the persons described in list A appended herewith in respect of agricultural land as detailed in para 1 of the plaint as allegations.*
2. *Whether the plaintiffs have acquired occupancy rights under Section 8 of the Punjab Tenancy Act and entitle for the declaration to be declared as owners in the possession of the land in suit?OPP*
3. *Whether the plaintiffs have no locus standi to file the present suit?OPD*
4. *Whether the suit of the plaintiffs is not maintainable in the present form?OPD*
5. *Whether the plaintiffs have estopped by their act conduct from filing the present suit?OPD*
6. *Whether the plaintiffs no cause of action to file the present suit?OPD*
7. *Relief.”*

1.7. The trial Court decreed the suit after noticing that the plaintiffs have been proved to be in the continuous possession of the land in dispute and no steps have been taken to seek eviction of the plaintiffs, therefore, the tenancy was created for perpetuity. The court further observed that there is only a stray entry of the payment of rent of Rs.30/- per annum, whereas, the remaining entries show consistently that the lease money continues to be @ Rs.42/- per annum. The first appellate Court has confirmed the aforesaid findings.

2. EVIDENCE PRODUCED BY THE RESPECTIVE PARTEIS:-

2.1 The plaintiffs in order to prove their case, examined PW1 Sh. Itwari (plaintiff no.1), PW2-Daryao Singh, Office Kanungo, PW3-Ashok Kumar, Moharar Patwari.

2.2. On the other hand, defendant no.2 examined himself as DW1 and thereafter, closed his evidence.

3. SUBMISSIONS MADE BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-

3.1. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

3.2. The learned counsel representing the appellant has submitted that as per copies of the jamabandies for the years 1960-1961, 1964-1965 and 1969-1970, the plaintiffs are recorded in possession as "Gair Marusi" on the payment of Rs.30/- per year. Thereafter, they have been reflected possession as 'Gair Marusi' on payment of Rs.42/- per year. The respondents prayed for grant of decree of declaration that they have become owner on the basis of Section 8 of the Punjab Tenancy Act, 1887, which enables the Court to grant declaration if the person establishes a right of occupancy on any ground other than the grounds specified in the section, however, the plaintiffs have failed to establish a right of occupancy either under the Act or on any other grounds.

3.3. Per contra, the learned counsel representing the respondents (plaintiffs) has contended that as the plaintiffs are proved to be in the possession of the property, for a period of more than 50 years, even before the institution of the suit, consequently the appeal is liable to be dismissed.

4. DISCUSSION BY THIS COURT:-

4.1 At this stage, it would be appropriate to extract Section 5, 6, 7 , 8 ,9 10, 11,of the Punjab Tenancy Act, 1887:-

“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 landowner 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.
- 6. Right of occupancy of, other tenants recorded as**

- having the right before passing of Punjab tenancy Act, 1908** - A tenant recorded in a record-of-rights sanctioned by the State Government before the twenty-first day of October, 1868, as a tenant having a rights of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to has a right of occupancy in that lands unless the contrary has been established by a decree of a competent Court in the suit instituted before the passing of this Act.
7. **Right of occupancy in land taken in exchange** - If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall be held to be subject to the same right occupancy as that to which the land given exchange had not taken place.
8. **Establishment of right of occupancy on grounds other than those expressly stated in Act** - 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.
9. **Right of occupancy not to be acquired by mere lapse of time** - No tenant shall acquire a right of occupancy by mere lapse of time.
10. **Right of occupancy not to be acquired by joint owner in land held in joint ownership** - In the absence of a custom to the contrary, no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.
11. **Continuance of existing occupancy rights** - Notwithstanding anything in the foregoing sections of this chapter, a tenant, who immediately before the commencement of this Act has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall when this Act comes into force, be held to have, for all, the purposes of this Act, a right of occupancy in that under the enactment specified in the same line of the second column of the table.”

4.2 Section 2(f) and Section 3 of the Punjab Tenants (Vesting of Proprietary Rights) Act, 1953 Act are extracted as under:-

2. Definition– In this Act, unless the context otherwise requires –

- | | | | |
|-----|----|----|----|
| (a) | XX | XX | XX |
| (b) | XX | XX | XX |

- (c) XX XX
- (d) XX XX XX
- (e) XX XX

(f) “occupancy tenant” means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.

3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords– Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-

(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector, within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

- (b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;
- (c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of land;
- (d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.”

Tenancy Act, 1887 that it only enables the Court to grant declaration if a person establishes a right of his occupancy on any grounds other than the grounds specified in those sections. Sections 5 to 11 fall in the Chapter-II of the Punjab Tenancy Act, 1887. Section 8 of the 1887 Act is a residuary provision which enables a person to establish the right of occupancy on any ground other than the grounds specified in these provisions. However, before conferring declaration that they have become owner while divesting the owners from their right, title or interest in the property, it is incumbent upon the Court to analyse the case in a proper perspective. Undoubtedly, the plaintiffs have claimed that they have been paying the nominal rent in cash and there is a custom of conferring the status of occupancy tenants but they have not led any evidence to prove this fact. On reading of the judgments passed by the Courts below, it is evident that the Courts have not adverted to any other ground apart from the grounds mentioned in Chapter-II of the Punjab Tenancy Act, 1887. Before granting such declaration the Court is required to minutely, carefully and pragmatically examine the statutory provisions. The plaintiffs have not referred to any other provisions apart from what has been referred to in Section 5, 6, 7, 9, 10 and 11 of the 1887 Act. It may be noted here that Section 9 of the 1887 Act specifically provides that the right of occupancy is not to be acquired by the mere lapse of time. Thus, in other words, mere long possession over a continuous period of more than 50 years is not in itself sufficient to confer ownership rights on the tenant/occupant.

4.4. The learned counsel representing the respondent has made sincere attempts to claim that the plaintiff's case falls within the purview of Section 2(f) of the 1952 Act. The first part of Section 2 (f) is applicable to a

tenant who immediately before the commencement of the 1952 Act is recorded as an occupancy tenant in the revenue record. It also includes a tenant, who after such commencement, acquires the right of occupancy in respect of the land held by him whether by an agreement with the landlord or through an order of the Court of competent jurisdiction or otherwise. Hence, even the second part of Section 2(f) of the 1952 Act is not applicable in this case. Section 3 of the 1952 Act starts with a non obstante clause. Clause (a) of Section 3 of the 1952 Act provides that the right of an occupancy tenant which has been recognized by any law, custom or usage for the time being in force which includes the shares in the shamilat land. Clause-b provides that the landlord shall cease to have any right to collect or receive rent or any share of the land revenue in respect to such lands and his liability to pay land revenue in respect of the land shall also come to an end.

4.5. It is the case of the plaintiffs that they have been paying the amount of rent in cash to the landowners. Moreover the plaintiffs are recorded as cultivators in column no.5 of the jamabandies for the years 1924-25, onwards. Their possession is recorded as 'Gair Marusi'. The literal meaning of the expression 'Gair Marusi' denotes a person that is a 'non occupancy tenant'. Reliance in this regard can be placed on **Jaleb Khan and others vs. Commissioner, Gurgaon Division Gurgaon and others, 2010(1) PLR, 111.**

4.6 Additionally, there is no evidence led by the plaintiffs to prove that the amount of lease money was equivalent to the amount of land revenue cess and taxes. The jamabandi for the year 1924-25 proves that the lease money was Rs.42/- per year, however, the amount of land revenue is not specified. Moreover, in the jamabandi for the year 1936-37, the total

lease money is Rs.30/- per year but no entry with regard to amount of land revenue has been recorded. In the jamabandi for the year 1960-61, the lease money of Rs.30/- per year has been recorded and there is no evidence of the amount of land revenue cess or tax. The jamabandi for the year 1974-75 proves that the lease money was Rs.42/- per year, whereas the land revenue cess and tax was Rs.14.80/-. The jamabandi for the year 1989-90 proves that the lease money was Rs.42/- whereas the amount of land revenue and cess was Rs.14.80/-. Hence, the plaintiffs have also failed to make out a case under Section 5 (2) of the 1887 Act.

4.7. In view of the foregoing discussion, the result is inevitable. Question no.(i) is answered in favour of appellant and against the respondents. On question nos.(ii) and (iii), no arguments have been addressed by the learned counsel representing the parties. Question no.(iv) does not need further deliberation in view of the Full Bench judgment in **Shiv Charan vs. Financial Commissioner, Haryana and others, 2004 (3) PLR 569**, to the effect that only the civil court has the power to grant decree of declaration that a tenant has acquired the ownership rights under 1952 Act.

4.8. Keeping in view the aforesaid facts and discussion, the regular second appeal is allowed.

4.9. All the pending miscellaneous applications, if any, are also disposed of.

23rd May, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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