

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 6036 of 2014 (O&M)

Ram Sharan
... Appellant(s)

Versus

Sheo Karan and Others
... Respondent(s)

AND

2. Regular Second Appeal No. 6037 of 2014 (O&M)

Ram Sharan
... Appellant(s)

Versus

Sheo Karan and Others
... Respondent(s)

**RESERVED ON: 20.07.2022
PRONOUNCED ON: 16.08.2022**

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ravinder Malik, Advocate
for the appellant.

Anil Kshetarpal, J.

1. While assailing the correctness of the judgment passed by the First Appellate Court, the defendant No.4 has filed these two appeals which are arising from a common judgment passed by the First Appellate Court while deciding two appeals arising from the same suit. The trial Court granted limited decree of protection from forcible dispossession, to the plaintiffs. Whereas the First Appellate Court, in view of the provisions of the

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

2

(hereinafter referred to as “the 1952 Act”), has granted declaration that the plaintiffs have become owners of the suit property. In the considered view of this Court, the following questions need adjudication:-

- I) Whether a non-agricultural land (which is not fit for agricultural purposes or for purposes subservient to agriculture) falls within the scope of ‘land’ as defined in the Punjab Tenancy Act, 1887 (hereinafter referred to as “the 1887 Act”) read with the provisions of the 1952 Act?
- II) Whether without fulfilling the requirements of Section 5 or 8 of the 1887 Act, the person recorded as non-occupancy tenants (*gair marusi*) is entitled to be declared occupancy tenants and consequently, conferred ownership?

2. Some peculiar facts are required to be noticed. The plaintiff/respondents, namely Sh.Sheo Karan, Sh.Kishori Lal and Sh.Partap Singh, children of late Sh.Guljari son of Sh. Ram Jass, filed a suit for declaration claiming to have become the owner of the land measuring 89 kanals and 2 marlas under Section 2(a), 2(f) and 3 of the 1952 Act and Section 5 and 8 of the 1887 Act. The plaintiffs have stated that their predecessor-in-interest, namely late Sh.Ram Jass was the resident of village Veru, Tehsil Tosham, District Bhiwani. The land in dispute was uneven, uncultivable and full of shrubs. The predecessors-in-interest of the defendants gave the land to the predecessor-in-interest of the plaintiff with

the condition that if they make the land cultivable and continue to pay the

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

3

nominal rent, then, the predecessor-in-interest of the plaintiffs or their children shall never be evicted from the land. It is claimed that the predecessor-in-interest of the plaintiffs made the land cultivable after putting hard labour and spending a lot of amount. It has been stated that after late Sh.Ram Jass, his sons, namely late Sh.Guljari and late Sh.Duni used to cultivate the land. Sh.Duni, who was an unmarried man, has died. They have been paying a fixed rent of ₹62/- per year to the defendants. It is further claimed that after the consolidation of holdings in the village, the land measuring 65 bighas, which was described as “Tibba” (sand dune) has become 89 kanals and 2 marlas and their predecessor-in-interest are in cultivation and possession of the land for more than 100 years now. The plaintiffs have come to know that the defendant No.1 to 3 have now sold on 24.09.2007 the land measuring 88 kanals to defendant No.4.

3. The defendant No.1 to 3 chose not to contest the suit, whereas, the defendant No.4 filed a detailed written statement. The defendant No.4, while contesting the suit, claimed that the plaintiffs are not the tenants over the entire land. Previously late Sh.Guljari and late Sh.Duni, sons of late Sh. Ram Jass, were the tenants in equal share and late Sh.Duni has died issueless, so, his rights of tenancy, even as per the allegations of the plaintiffs, cannot be inherited by them. Thus, it is submitted that the rights of tenancy can only devolve upon in favour of lineal descendant and the plaintiffs are not covered by the same. It was further asserted that there was no agreement between the predecessors-in-interest of the plaintiffs and defendant No.3 that they would not be ejected. The defendant No.4 also

asserted that the plaintiffs have not disclosed from whom the land in dispute

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

was taken on rent. It was also alleged that the entry of rent @ ₹62/- per month is not correct.

4. The plaintiffs filed replication and the trial Court, on appreciation of the evidence, has culled out the following issues:-

- “1. Whether plaintiffs are owners in possessiveness, as alleged in the plaint?OPP*
- 2. If issue no.1 is proved whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ?OPP*
- 3. Whether the suit of plaintiffs is not maintainable in the present form ? OPD*
- 4. Whether the plaintiffs have no cause of action or locus standi for filing the present suit?OPD*
- 5. Whether the plaintiffs are estopped by their own act and from filing the present? OPD*
- 6. Relief”.*

5. The plaintiffs have examined PW.1 Sh.Ram Sarup, PW.2 Sh.Kishori Lal and PW.3 Sh.Dashrath. They also produced jamabandis from the year 1944-45. On the other hand, appellant-Sh.Ram Saran (defendant) appeared as his own witness as DW.1.

6. The trial Court, on appreciation of evidence, has found that the plaintiffs have failed to fulfill the requirements of the 1887 Act read with 1952 Act, therefore, the plaintiffs are only entitled to a decree of permanent injunction from interfering in the possession of the plaintiffs forcibly. The plaintiffs as well as the defendant No.4 have filed two appeals before the

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

5

filed by the defendant No.4, whereas, allowed the plaintiff's appeal. It has been held that the plaintiffs are proved to be in possession of the property since 1944-45 and they are proved to be in cultivating possession of the land while fulfilling the requirements of Section 5 and 8 of the 1887 Act, consequently, they have become owners in view of the provisions of the 1952 Act.

7. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book and the record, which was requisitioned.

8. The learned counsel representing the appellant has filed the synopsis along with the gist of his arguments.

9. Before moving further, it is important to take note of the relevant provisions of the 1887 Act and 1952 Act. Section 4 (1), 5, 8 and 9 of the 1887 Act are extracted as under:-

“4. Definition - *In this Act, unless there is something repugnant in the subject or context-*

(1) “land” means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land.

(2) to (19) XXXX XXXX XXXX XXX

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

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

6

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

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

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) and (7) XXXX XXXX XXXX XXX

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. Section 2(a) and 3 of the 1952 Act are extracted as under:-

“2. *Definitions.- In this Act, unless the context otherwise requires-*

(a) *"Appointed day" means -*

(i) *in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant*

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

of any land in the revenue records, on the 15th day of June, 1952.

(ii) in relation to any tenant who obtains a right of occupancy in any land after the commencement of this Act, the date on which he obtains such right of occupancy;

(b) to (f) XXXX XXXX XXXX XXXX

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;

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

(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 the 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”.

11. As is evident from the reading of Section 4(1) of the 1887 Act, the land means “the land which is let out for the agricultural purposes or for the purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures on such land. In simple words, for the purpose of applicability of the 1887 Act, the land must be let out either for the agricultural purposes or for the purposes subservient to agriculture or for pasture including the sites of the buildings and other structures on such lands. Hence, *sine qua non* for applicability of the provisions of the 1887 Act is that the land should be the one used primarily for agricultural purposes etc. It is evident that the plaintiffs have produced a copy of jamabandis for the year 1944-45 as Ex.P1. The nature of the land measuring 65 bighas has been described as sand dune (“Tibba”). No doubt, late Sh. Dunni and late Sh. Guljari sons of late Sh. Ram Jass have been recorded to be *gair marusian* (non-occupancy tenants). The literal meaning of *gair marusi* is non-occupancy. The next jamabandi is for the year 1952-

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

10

sand dune. The next jamabandi for the year 1956-57 is Ex.P3. The entry continues to be the same. In all these jamabandies, the rate of rent has been recorded as ₹62/- per year. The next jamabandi for the year 1960-61 shows that in the form of a sand dune. The jamabandi for the year 1965-66 (Ex.P5) proves that the size of the land is 55 bighas. The type of land has been recorded to be a sand dune, whereas, the lease money continues to be ₹62/- per year. The next jamabandi (Ex.P6) is for the year 1971-72. Again, the land measuring 55 bighas has been reflected as the sand dune and the rate of rent is ₹62/- per year. The jamabandi for the year 1979-80 is Ex.P7. This is jamabandi with respect to period post the consolidation of holdings in the village. Now, the land has been identified by the rectangle numbers and khasra numbers. The land has been described either as pond or sand dune. On a careful perusal of the jamabandi, it is evident that the land measuring 9 kanals is under a pond, whereas, the land measuring 80 kanals is sand dune. The jamabandi for the year 1982-83 is Ex.P8 and it again reflects that the land measuring 80 kanals is sand dune, whereas, there is a pond in the land measuring 9 kanals. The entry in the coloumn of rent continues to be same. Ex.P9 is the jamabandi for the year 1987-88 and again the land measuring 80 kanals is a sand dune, whereas, the land measuring 9 kanals is a pond. The jamabandi for the year 1992-93 (Ex.P10) is exactly the same as Ex.P9. The jamabandi for the year 1997-98 (Ex.P11) is exactly the same as the previous jamabandi. The jamabandi for the year 2002-03 (P13) is exactly the same as the previous one. The plaintiffs have also produced the copy of khasra girdawri from crop kharif 2003 to rabi 2007. For the first time, the

land is shown to have been used for the agricultural purposes. The

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

11

jamabandi for the year 2002-03 (Ex.P13) also shows that 72 kanals of land is a sand dune, whereas, the land measuring 36 kanals and 4 marlas is pond. From Ex.P14 to Ex.P16, the plaintiffs have produced the record to connect the land before or after the consolidation of holdings. The defendant No.4 has produced a copy of the sale deed as also a copy of mutation of the sale deed.

12. The first question which arises for consideration is “As to whether the property in dispute falls within the definition of “land” as defined in Section 4(1) of the 1887 Act or not. Normally, the land described as sand dune cannot be let out for agricultural purposes or for the purposes subservient to agriculture. The property described as sand dune can possibly be used as pasture, however, no evidence has been led to the effect that it has been used as a pasture. The land, for the first time, became cultivable in the year 2003.

13. Furthermore, it is evident that the plaintiffs are required to prove under Section 5(2) of the 1887 Act that they have continuously occupied the land for a period of 30 years and paid no rent, therefore, they have not paid the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon. It is only, thereafter, they shall be entitled to invoke the statutory presumption of fulfilling the conditions of clause (a) of sub Section (1) of Section 5 of the 1887 Act. From the revenue record, it is not proved as to how much was the amount of land revenue, the rates and cesses for the time being chargeable thereon. The

First Appellate Court has observed that the amount of ₹62/- per year is

equivalent to the land revenue. The First Appellate Court has committed a

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

12

calculation error. As per the findings, for the first hectare of the land, the amount of land revenue was 70 paisa for 0.5 hectare of land. In other words, the amount of land revenue per hectare was ₹1.40. For the next 4 acres of the land, the land revenue was ₹1/- for every half hectare. Thus, for the next 4 acres of the land, the amount comes to ₹8/-. The total land, in the present case, is 89 kanals and 2 marlas, which comes to 11 acres, 1 kanal and 2 marlas. 1 hectare of land is equivalent to 2.471054 acres. The first 5 hectares of land would be equivalent to 12.355227 acres. The total amount of the land revenue on more than 12 acres of the land shall be ₹9.40, whereas, the rent is ₹62/- per year.

14. The First Appellate Court was much impressed by the fact that the plaintiffs have continuously occupied the said land. On a careful reading of Section 9 of the 1887 Act, it is evident that the statute itself provides that mere lapse of long time shall not be a ground to acquire the right of occupancy.

15. The next provision which needs examination is Section 8 of the 1887 Act, which provides for establishing a right of occupancy on any ground other than the grounds specified on the foregoing sections. The plaintiffs have not led any evidence to prove that they have a right of occupancy on any other ground, other than the grounds specified in those sections.

16. It would be noted here that this Court has dealt with the aforesaid issue in the various cases including the *Regular Second Appeal*

No. 4412 of 2014 (Ram Kishan and Others v. Jagdish and Others, decided

**Regular Second Appeal No. 6036 of 2014 (O&M) AND
Regular Second Appeal No. 6037 of 2014 (O&M)**

13

(Civil) 738 and Mandi Adampur Cooperative Society Limited v. Bohar Singh and Others 2019 (1) RCR (Civil) 815.

17. Keeping in view the aforesaid discussion, the result is inevitable. Hence, both the appeals are allowed and the judgment and decree passed by the First Appellate Court is set aside and that of the Trial Court is restored.

18. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

August 16, 2022
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No