

2022:PHHC:173670
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4687-2017 (O&M)

Date of decision: 05.07.2022

Reserved on : 24.05.2022

Vaish High School now Hindu Senior Secondary School, Nuh

....Appellant

Versus

Lekh Ram @ Lekh Raj and others

..Respondents

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pavan Malik, Advocate for the appellant

Mr. Mukul Aggarwal, Advocate for respondent no.1

ANIL KSHETARPAL, J

1. Brief facts of the case:-

1.1 While assailing the judgment and decree passed by the first appellate Court, defendant no.4 has filed the present Regular Second Appeal.

1.2 In the considered opinion of this Bench, the following question arises for adjudication:-

“As to whether a Gair Marusi tenant, who does not fulfill the requirements of Section 5 of the Punjab Tenancy Act, 1887 (hereinafter referred to as ‘the 1887 Act’) is entitled to a declaration that he has attained the status of occupancy tenant and consequently has become an owner in view of the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred

to as the 1952 Act?”

1.3 Some peculiar facts are required to be noticed. The plaintiff filed a suit for declaration with the consequential relief of permanent injunction, claiming that he has become the owner of agricultural land measuring 3 kanals located within the revenue estates of Tehsil Nuh, District Mewat, by the virtue of provisions contained in Section 5 and 8 of the 1887 Act and Section 3 of the 1952 Act. He claims that he is a Gair Marusi tenant under Shamlat Thula Naro Khand through its various proprietors over the suit land on a payment of nominal rent of Rs. 10/- and he is cultivating the land for more than last 46 years, on the basis of an implied contract between the plaintiff and the defendants that he shall not be ejected from the suit land and the rent would never be increased. He claims that since his possession is more than 30 years old and he has made the suit land cultivable by investing a huge amount hence, he has become the owner of the suit land. The plaintiff also claims that the entry of Vaish High School as mortgagee in possession is wrong and the Vaish High school has no concern with the mortgagee rights.

1.4 The defendants filed the various separate written statements while contesting the suit. It was claimed that the plaintiff has no connection with the land in question as neither he is tenant nor in possession of the land. It is stated that since 1946 the land is mortgaged with possession in favour of the school and is lying vacant.

1.5 The proprietary body also contested the suit and took a similar stand that the plaintiff was never inducted as a tenant. On appreciation of the pleadings, the trial court culled out the following

issues:-

- 1. Whether the plaintiff is entitled to decree of declaration on the grounds as alleged in the plaint? OPP .*
- 2. If the issue No.1 is proved, whether the plaintiff is entitled to decree of permanent injunction on the grounds as alleged? OPP .*
- 3. Whether the suit is not maintainable ? OPD*
- 4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD*
- 5. Whether the suit of plaintiff is bad for non - joinder and mis joinder of necessary parties? OPD*
- 6. Whether the plaintiff has no come before the Court with clean hands and has concealed the true and material facts? OPD*
- 7. Relief.*

1.6 The learned trial court has held that the plaintiff has failed to fulfill the specific requirements of Section 5 and 8 of the 1887 Act, therefore, the suit was dismissed. The first appellate Court has reversed the judgment simply on the basis of a judgment of the High Court in **Mauj Khan and others versus Deen Mohammad and others 2017 (1) RCR (Civil) 700**. It has been held in the said judgment that a Gair Marusi tenant for a period of more than 40 years, on payment of Rs.10/- as annual rent, has acquired the status of Occupancy tenant, which has ripened into ownership.

2. Discussion:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook containing the judgments passed by both the courts below as well as the record of the courts below, which was requisitioned.

2.2 On liberty granted, the learned counsel representing the parties have also filed their written synopsis alongwith the gist of their

arguments.

2.3 At this stage, it is important to note the literal meaning of the word 'Gair Marusi'. In fact, Gair Marusi is a combination of two words i.e Gair and Marusi. In normal parlance, the revenue authorities refer to term Gair Marusi, if the status of a person in possession is not clear. However, with the passage of time the revenue authorities have started using this word while referring to the persons who are tenants at Will. The literal meaning of Gair is 'non' and Marusi is 'Occupancy'. This term has been explained by the High Court in **Karnail Singh vs Magistrate First Class, Hoshiarpur 1967 1 ILR (Punjab) 846**. Furthermore in Punjab Settlement Manual, 1889 by Douie James published by the Chawla Publications gives a proper detail of the rights of tenants in chapter IX. It has been noticed that the Vernacular equivalent of the word are Marusi or hereditary, Gair Marusi or non-hereditary. Note under the aforesaid manual reads as under:-

i) It is better to use these well known terms to adopt transaction of "Occupancy" and "non Occupancy" such as 'dakhildars' or 'Gair dakhildars. After discussing in detail the rights of Occupancy tenants in various paragraphs in para 219 the tenant at will has been explained to certain extent. It has been stated that the incidents of the tenures of tenants for a term of years and of yearly tenants so far as they are not determined by the contract, are described in Chapter II of the Land Administration Manual. Once we go to Chapter 2 of the Land Administration Manual, it is evident that in para 59 the tenant at will usually holds by a year only, lease for a term of years being still

uncommon. The tenant at will can be ejected by a notice by the landlord who can thereafter apply to Tehsildar or Naib Tehsildar in this regard.

2.4 It may be noted here that that the occupancy at will was made heritable for the first time with the enactment of the Punjab Security of Land Tenure Act, 1953. As per Section 8, it was provided that on the death of the tenant, the tenancy would continue to operate except when the tenant leaves no lineal descendants, mother or widow. Under the provisions of the 1887 Act, the tenant at will was not heritable. In fact, under the 1887 Act, the major part of the act is dedicated to the occupancy tenants as would be clear from the reading of chapter II, III, V and VI.

2.5 At this stage, it may be noted that the plaintiff has claimed that he has become an occupancy tenant as per Section 5 and 8 of the 1887 Act, which are extracted as under:-

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.

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.”

2.6 At this stage, it would also be appropriate to extract the definition of “land” as stated in Section 4(1) of the 1887 Act:-

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;

2.7 From a careful reading of Section 5, it is evident that the plaintiff was never recorded to be in possession 20 years before the commencement of the 1887 Act. Hence, sub-section 1 of Section 5 is not applicable. The plaintiff can try to build his case under sub-section 2 of Section 5. If we dissect the requirements of sub-section 2 of Section 5, it

is evident that the tenant has to prove the following issues:-

a) that he has continuously occupied the land for a period of 30 years.

b) that he has paid no rent thereof or therefore beyond the amount of the land revenue thereof and the rate and cesses for the time being chargeable on the land.

c) If both the conditions are fulfilled, there shall be a statutory presumption that he has fulfilled the specific requirements of the conditions of clause (a) sub-section 1 of Section 5 of the 1887 Act. Section 8 talks about the rights of occupancy on the grounds other than expressly stated in the 1887 Act. Thus, under Section 8 the tenant is required to prove that he has to establish the right of occupancy under some other customary law or agreement or some other law. It is not the case of the plaintiff that he has the right of occupancy under any other law.

2.8 Now the Bench proceeds to examine the evidence. The plaintiff has produced the revenue record from the year 1967-68. Jamabandi for the year 1967-68 is Ex P9. In the cultivation column, the plaintiff has been recorded as Gair Marusi. The type of land is recorded as Narmote, which is a waste/ lower quality of the barani land. The Barani land is a type of land which does not have a source of irrigation and is wholly dependent upon the rains. In column number 9, it is recorded that the rent is Rs.180/- for the whole year for the entire khata number 923.

2.9 The next Jamabandi produced is Ex. P8 for the year 1972-

73 and the entry is the same. The quality of the land has been specified as Narmote and in column number 9, the rent is Rs 10/- per year. On a careful reading of column Number 11, it is evident that the amount of land revenue alongwith the rates and cess is 90 paisa. The same entry continues in the Jamabandi for the years 1977-78, 1982-83, 1987-88, 1992-93, 1997-98, 2002-03 and 2007-08. The plaintiff has also produced the khasra girdawari Ex.P10 for the two crops Sawani and Haadi for the year 2012. The land is recorded to be vacant. He has also produced a copy of the said khasra girdawari for the two crops Sawani and Haadi of the Year 2012. The land is recorded to be vacant. He has also produced the copy of khasra girdawari Ex.P 12 for the crops Sawani 2014 and Haadi 2015. In crops sown in February 2015 the land measuring 2 kanals 16 marlas is for the first time recorded to be sown with the mustard crop whereas 4 marlas is under the area of the tubewell.

2.10 If we read the statement of the plaintiff, who has appeared as PW1 ,it is evident that he does not remember on which month, day or year he was inducted as a tenant. He claimed that he was inducted as a tenant by Jhangi Ram Sukan etc. In the ownership column, the entry is Shamlat Thola. In other words, this is a joint land of a particular community. The plaintiff has produced Ex P1, a list of proprietors of Shri Khanja Thola Naro Khand, which proves that there are as many as 242 proprietors including provincial Government, District board etc. etc. In fact, Shamlat Dhola Narkhod is proprietor No.244, 243 and 245. There is no evidence that the plaintiff has been cultivating the land for agricultural purposes for more than last 30 years before the filing of the

suit. The plaintiff has not produced any other Khasra girdawari which would atleast indicate that the land was being used for some agricultural purpose or for a purpose which is subservient to the agriculture or for sites of of building or structures on such land. As per the Section 4 (1) the land includes the land used for pastures. It is not the case of the plaintiff that it is using the land for pastures.

2.11 Before declaration with regard to ownership is granted, the other person is required to be divested of the title. In such circumstances, the provisions of the Act have to be construed strictly. The language of Section 5(2) is categorical. In the present case, if we go by the revenue record, the lease money was Rs.10/- per year whereas the amount of land revenue, rates and cesses was 90 Paisa only, per year. Hence, the plaintiff was liable to pay more than the land revenue. Furthermore, he is required to prove that the land is being cultivated for the period of more than 30 years so as to fall within the definition of land for applicability of the 1887 Act. The plaintiff has failed to prove the same.

2.11 Furthermore in **Jaleb Khan and others vs. Commissioner, Gurgaon Division, Gurgaon and others (2009) 4 RCR (Civil) 385** the High Court held that a Gair Marusi can never claim right of occupancy tenant.

2.12 Now the Bench proceeds to examine the judgment relied upon by the learned First Appellate Court in **Mauj Khan (supra)**. This Court has carefully read the judgment passed in Mauj Khan's case. In para 17 of the aforesaid judgment three questions were culled out by the Court. For the purpose of this case, question no. 2 is relevant. The Bench

declared that in terms of Section 4 (2) the tenant who has been recorded as Gair Marusi, who is paying nothing more than the amount of the land revenue, can be declared as the occupancy tenant. In fact, the previous judgment in **Jaleb Khan's case (supra)** was not brought to the notice of the court. In Jaleb Khan's case (supra), the court declared that the Gair Marusi can never be granted the status of occupancy of a Marusi tenant. However, this Court does not wish to enter into that area of discussion. Where there is a difference of opinion. Even if assuming that a Gair Marusi tenant is required to fulfill the remaining requirements of Section 5(2) of the 1998 Act. In the present case, it has been consistently proved that the plaintiff-defendant was liable to pay the lease money at the rate of Rs.10/- per year whereas the amount of land revenue, rates and cess was only 90 paisa per year. Thus, the amount of rent was more than the amount of the land revenue. Hence, the plaintiff failed to fulfill condition no. 2. Furthermore, the plaintiff has failed to prove that he is in cultivating possession of the land for the last 30 years even before filing of the suit. As already noticed, the land has been described as Narmod, which is a waste kind of land and the plaintiff has only placed on record only two Khasra girdawaris. In the year 2012, the land is shown to be vacant whereas in February 2015, for the first time, the land has been used for growing mustard crop. Whereas the suit was filed in the year 2013. Thus, in the year 2013 when the suit was filed there was no evidence that the property in dispute is covered by the definition of land as defined in Section 4(1) of the 1887 Act. Consequently, the reliance placed by the First Appellate Court on Jaleb Khan's case was not

appropriate.

2.13 It may be noted here that learned counsel representing the plaintiff (respondent) also relies upon the judgment passed in **Gram Panchayat, Murthal versus Mahender (RSA 131 of 1995** decided on 24th January 2019). On a careful reading of the aforesaid judgment, it is evident that the coordinate Bench relied upon the judgment passed in **Mauj Khan's case (supra)** and in the facts of the case held that the respondents have fulfilled the specific requirements of Section 5(2). In fact, the judgments passed by the First Appellate Court were upheld. With the greatest respect, the aforementioned judgment does not as a ratio decidendi lays down that in each and every case where the entry of Gair Marusi tenant continues for 30 years, the tenant is entitled to declaration as the occupancy tenant. The 1887 Act apart from the continuous possession also requires a tenant to fulfill certain other conditions which are a sine qua non for the grant of declaration. In fact, if one carefully reads Section 9, it is evident that the statute itself provides that the right to occupancy cannot be acquired merely by the lapse of time.

3. Decision:-

3.1 In the alternative, the learned counsel representing the appellant submits that the plaintiff is in possession as per the revenue record and therefore, he is entitled to the relief of permanent injunction against the forcible dispossession. There is a merit in the aforesaid plea. The plaintiff is recorded to be in possession of the suit land for the last 50 years nearly, before filing of the suit. Hence, he shall not be

dispossessed except in the due course of law.

3.2 With all these observations, the Appeal is allowed.

05.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE