

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.6295 of 2018(O&M)

Reserved On 25.05.2022

Date of Order:4th July, 2022

Karan Singh and others

...Appellants

Versus

Municipal Corporation, Faridabad through its Commissioner
NIT Faridabad.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shiv Kumar, Advocate, for the appellants.
Mr. Lokesh Sinhal, Advocate, for the respondent.

ANIL KSHETARPAL, J.

1. While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiffs have filed this appeal.

2. Some peculiar facts are required to be noticed.

3. The plaintiffs while filing the suit for grant of decree of declaration to the effect that they have acquired occupancy rights under Section 5 and 8 of the Punjab Tenancy Act, 1887, claim that in view of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, they have become owners of the property. It is their case that they and prior to them, their predecessor-in-interest have been in continuous possession of the suit property on a payment of Rs.3/- per canal per year, for the last 70 years. Their predecessor-in-interest late Sh. Chiranji filed a civil suit which was dismissed on 13.10.1984, on the ground that the

Civil Court has no jurisdiction to grant the declaration. This judgment and

decree was affirmed in first appeal as well as in the second appeal. Thereafter, their predecessor-in-interest filed an application before the Assistant Collector which was dismissed on the ground that the Civil Court has the exclusive jurisdiction to decide the matter. An application seeking eviction filed by the Municipal Corporation, Faridabad, was also dismissed by the Assistant Collector Ist Grade on the ground that the petitioner has been in possession for a very long period of time.

4. Consequently, after a Division Bench of this High Court held that the Civil Court has the exclusive jurisdiction to grant such a decree to the occupancy tenants, a suit was filed by the plaintiff on 29.05.2013.

5. The defendants, while contesting the suit, claimed that the plaintiffs have admitted that the rate of rent is Rs.400/- per year. It was claimed that the property is a "Shamlat Deh" land of village Dabua which subsequently, came within the jurisdiction of Faridabad Municipal Corporation and consequently, it acquired a vested interest in the property in question.

6. Both the courts on appreciation of evidence, have dismissed the suit by passing concurring judgments. Primarily, both the courts have held that the plaintiffs have failed to prove that they were ever cultivating the land for agricultural purposes which is a sine-qua-non for the maintainability of the suit claiming extinguishment of occupancy tenancy rights and for grant of declaration that the occupant has become the owner. It may be noted here that the plaintiff has produced revenue records from 1925 till the date of filing of the suit, but he has not led any evidence to connect the old khasra numbers, before consolidation of holdings, with the

numbers which were allotted post its consolidation. The land in dispute can be identified from the revenue records produced since 1961-1962. In the absence of evidence to connect the old khasra numbers with new khasra numbers before the year 1961-62, it is not appropriate to rely upon the revenue record produced by the plaintiffs. Post the consolidation of holdings, the first jamabandi is of the year 1961-1962. It shows that out of total land measuring 13 kanals and 5 marlas, 9 kanals and 10 marlas is recorded as "Narmot" whereas the remaining land is either recorded as "Tehri" or "Gair Mumkin". Narmot is a kind of a waste land and it is certainly not cultivable. In jamabandi for the year 1966-1967, again 12 kanals and 2 marlas of land is shown as "Narmot", whereas, 1 kanal and 5 marlas is shown as "Tehri". In the jamabandi for the year 1971-1972, 5 kanals and 7 marlas of land is recorded as "Narmot" whereas 8 kanals is recorded as "Banjar Kadim". As per para 267 of the Punjab Settlement Manual, 1899, the expression "Banjar Kadim" means an old uncultivable land. The expression "Kadim" also includes all culturable waste land. The new uncultivable land is known as "Banjar Jadim". The expression "Gair Mumkin" also, denotes land which is not used for agricultural purposes.

7. Moreover, the jamabandi for the year 1976-1977 also records 5 kanals and 7 marlas of land as "Narmot" whereas 8 kanals of land is depicted as "Banjar Kadim". On careful perusal of column no.9, of the jamabandi for the year 1976-1977, it is evident that the rate of rent is recorded as Rs.400/- per year which continues till the jamabandi for the year 1981-1982. In the jamabandi for the year 1986-1987, 5 kanals and 7 marlas of land is recorded to be "Gair Mumkin Plot and house". The rate of rent is recorded as Rs.400/- per year. Same position continues upto jamabandi for

the year 2001-2002.

8. Keeping in view the aforesaid facts, both the courts have correctly recorded that the plaintiffs have failed to prove that the land in dispute was ever used for cultivation or for any other purpose subservient to agriculture. There is another aspect of the matter which needs attention. In the jamabandi for the year 1924-1925, the land is recorded as “Shamlat Deh or “Panchayat Deh”. The legislature has enacted the Punjab Village Common Lands (Regulation) Act, 1953. As per Section 3 of the aforesaid Act, all Shamlat lands vested in the Gram Panchayat irrespective of any custom, decree or other law. Section 3 starts with a non-obstante clause. No doubt, Section 4 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, also starts with a non-obstante clause, however, in the present case, the land is already vested in the Gram Panchayat. The 1953 Act was substituted by the Punjab Village Common Lands (Regulation) Act, 1961. Section 3 of the aforesaid Act provides for the types of land to which the Act applies. Sub-section(1) of Section 3 provides that the Shamlat law shall be deemed to have been applied to all lands which are “Shamlat Deh” as defined in clause (g) of Section 2 of the 1961 Act. Section 4 of the 1961 Act again starts with a non obstante clause and provides that the land which is included in Shamlat Deh of the village and which has not vested in a Panchayat under the Shamlat law shall at the commencement of this Act, vest in a Panchayat. It is also evident from the revenue record that the land was always recorded as “Shamlat Deh”. It is even the case of the plaintiffs that the land is recorded as “Shamlat Deh”. As per the jamabandi, for the year 1991-1992, the Faridabad Complex is recorded as the owner.

9. Keeping in view the aforesaid facts, there is absolutely no ground to interfere with the findings of fact arrived at by the Courts below.
10. Hence, the appeal is dismissed.

4th July, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No