

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA-363-1992 (O&M)
Reserved on: 17.05.2023
Date of pronouncement: 26.05.2023

Surat Singh (since deceased) through his LR's and others
...Appellants

Versus

Parsandi and others
...Respondents

(2) RSA-588-1992 (O&M)

Surat Singh (since deceased) through his LR's and others
...Appellants

Versus

Parsandi and others
...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ramesh Hooda, Advocate
for appellant No.1.

Mr. Animesh Sharma, Advocate with
Ms. Suchi Sodhi, Advocate
for appellants No.2 & 3.

Mr. Rajinder Goel, Advocate for the respondents.

H.S. MADAAN, J.

By this order, two appeals relating to same property and
between the same parties are being disposed of.

RSA-363-1992

Briefly stated facts of the case are that plaintiff Parsandi

Devi and 09 others had brought a suit against defendant Mula and 15 others, contending that they have been in cultivating possession of the suit land measuring 66K-17M for the last more than 100 years through their predecessors in interest as tenant without payment of any rent to the owners; at the time of creation of tenancy, there was an agreement between the parties that the plaintiffs would not be ejected from the land in suit in any case; according to the local custom of the area, the tenants like the plaintiffs had acquired occupancy rights under Section 8 of the Punjab Tenancy Act, 1887 read with provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1950; the plaintiffs submitted that they have acquired complete proprietary rights over the suit land and they are cultivating the same through tenants i.e. defendants No.11 to 13; the rights of the plaintiffs and defendants No.11 to 13 already stand adjudicated in the previous litigation between them in suit No.60/1 of 1976 titled 'Surat etc. Vs. Smt. Parshandi etc.' decided on 12.02.1978 by Civil Court at Sonapat; as regards another litigation in the form of suit No.106/1 titled 'Mula etc. Vs. Smt. Parshandi Devi etc.', it is contended that a decree for possession dated 17.01.1979 was wrongly obtained by Mula etc., which has no effect upon the rights of the plaintiffs.

2. On notice, the defendants No.2,6,7,11,12,13,15,16 and 17 had offered a contest to the suit but after filing of written statement, defendants No.2, 6 and 7 did not join the suit proceedings and the suit was ultimately contested on behalf of defendants No.11,12,13,15,16 and

17 only. In the written statement filed by them, they had raised legal objections that the suit was barred by principle of res judicata; the plaintiffs were estopped by their own act and conduct from filing the suit; the plaintiffs lacked locus standi to bring the suit; the suit was not maintainable and was barred by limitation. On merits, such contesting defendants contended that the plaintiffs had concealed material facts from the Court, more particularly regarding entries in the revenue record. The answering defendants claimed that they are in actual physical possession of the suit land as co-owners. They denied that any agreement was entered into between the parties regarding the non eviction of plaintiffs or their predecessors from the suit land. According to the contesting defendants, the plaintiffs have already been ejected from the suit land and they have no right or concern therewith. Such defendants denied that the plaintiffs have acquired occupancy rights in the suit land. They craved for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs have become the owners of the suit land as alleged ? OPP.
2. Whether the decree dated 17.01.1979 is wrong and is not binding on the rights of the plaintiffs as alleged? OPP.
3. Whether the suit is barred by principle of res-judicata? OPP.
4. Whether the plaintiffs are estopped from plea of occupancy right under Section 2 Rule of CPC.
5. Relief

4. The parties were afforded sufficient opportunities to lead

evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Sub Judge Ist Class, Sonapat, vide detailed judgment and decree dated 25.02.1987 dismissed the suit of plaintiffs, observing that the plaintiffs had previously repudiated the tenancy and have failed to establish their occupancy rights. They have been unable to show that they have become full fledged owners of the suit land.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiffs had preferred an appeal before District Judge, Sonapat, that appeal was assigned to Addl. District Judge, Sonapat, who vide judgment and decree dated 07.12.1991 accepted the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs to the effect that they have acquired occupancy rights to the suit property detailed in para No.1 of the plaint and consequently have become full owners thereof in view of provisions contained in Section 8 of the Punjab Tenancy Act read with provisions contained in the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 and Mulla etc., have nothing to do with the suit land.

7. Feeling dissatisfied with the judgment and decree passed by the Ist Appellate Court, the defendants have knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents/plaintiffs, who have put in appearance through counsel.

8. **The facts of RSA-588 of 1992** are that plaintiff Mula (since dead) through his LRs and othes had filed a suit against defendants

Parsandi and others, seeking possession of the suit land claiming that the plaintiffs along with defendants No.6 to 9 are owners of the same. As per version of the plaintiffs, defendants No.1 to 5 are tenants under the plaintiffs and defendants No.6 to 9 on payment of rent 'Bashrah Parta Malkan Billa Malkana'; defendants No.6 to 8 have been cultivating the suit land under defendants No.1 to 5 on payment of 1/3rd batai; as defendants No.1 to 5 had denied the title of the plaintiffs and defendants No.6 to 9 in civil suit No.196/1, 125/2 of 1975 titled as 'Parsandi etc. Vs. Moola etc.'; in that suit, they had claimed themselves to be owners of the suit land denying the title of plaintiffs and defendants No.6 to 9; according to the plaintiffs, since defendant No.9 is colluding with defendants No.1 to 5, therefore, they have impleaded him as a proforma defendant whereas defendants No.6 to 8 are cultivating the land under defendants No.1 to 5, therefore they have been impleaded as proforma defendants.

9. On notice, defendant No.8 appeared and filed written statement admitting the claim of plaintiffs. Initially, defendants No.6, 7 and 9 were proceeded against ex parte but after setting aside of original decree, counsel for defendants No.6 to 9 had made a statement on 20.01.1980 that he had no objection if the suit of the plaintiffs was decreed and that defendants No.6 to 9 did not want to file any written statement.

10. The suit was contested by defendants No.1 to 5. In the written statement filed by them, they had submitted that defendants No.6

to 8 had filed a suit for declaration that they have become owners of the suit land but it was dismissed on 07.09.1987; though defendants No.6 to 8 cultivating the suit land under defendants No.1 to 5 as tenants (gairmarusi) but they have been got ejected by defendants No.1 to 5 who are now themselves in possession of the suit land as tenants. Therefore, there is no question of their possession being hostile and open against the plaintiffs. Their possession is for the last 100 years as gairmarusi beshrah parta malkan a billa malkan; during this period, the prices of commodities have increased sufficiently but the rent has not been enhanced, therefore, the answering defendants have become occupancy tenants in view of Section 8 of the Punjab Tenancy Act, 1887 and consequently, the owners under occupancy tenants (Vesting of Proprietary Rights) 1953 from the appointed date. Such defendants have taken an alternative plea that they have become occupancy tenants and owners as per customs of District Sonapat, therefore, the plaintiffs have no concern what so ever with the suit land and their names are wrongly mentioned in the column of revenue record. It has further been pleaded that there was an agreement between the predecessors in interest of the parties wherein it was settled that the contesting defendants would not be ejected. In the end, these defendants prayed for dismissal of the suit.

11. Plaintiffs filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

12. After hearing arguments, the trial Court of Addl. Senior Sub Judge, Sonapat, vide detailed judgment and decree dated 22.08.1989

decreed the suit of the plaintiffs, passing a decree for possession of the suit land in favour of the plaintiffs and defendants No.6 to 9 and against the the contesting defendants No.1 to 5.

13. Feeling aggrieved by the judgment and decree passed by the trial Court, defendants No.1 to 5 had preferred an appeal before District Judge, Sonapat, that appeal was assigned to Addl. District Judge, Sonapat, who vide judgment and decree dated 07.12.1991 had accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs.

14. Feeling aggrieved with the judgment and decree passed by the Ist Appellate Court, appellants Surat Singh, Dharam Chand, Ram Dayal (since deceased) through his LRs and Sujra (since deceased) through his LRs have knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents, who have put in appearance through counsel.

15. Both the appeals are being adjudicated together.

16. I have heard learned counsel for the parties besides going through the record.

17. Learned counsel for the appellants has attacked the impugned judgment and decree passed by the Ist Appellate Court contending that those are result of misreading of evidence and wrong interpretation of law. As a matter of fact, Parsandi Devi and others, who were plaintiffs in Civil Suit No.44 of 1986 had lost their right of tenancy in the suit land by taking a plea of adverse possession in the previous litigation between the parties, therefore, there was no question of such

plaintiffs having acquired occupancy rights in the suit property under Section 8 of the Punjab Tenancy Act, 1887 (for short 'Act of 1887) and then becoming full fledged owners of the suit land in the light of provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (for brevity 'Act of 1953).

18. Whereas learned counsel for the respondents has strongly contested those assertions contending that though such plea of adverse possession had been taken earlier but thereafter the consistent stand of such plaintiffs/respondents has been that they are in possession as occupancy tenants and their such right ripened into ownership in view of Act of 1953 and no fault can be found with such inference drawn by the Ist Appellate Court of Addl. District Judge, Sonapat.

19. After considering the rival contentions, I find that the trial Court has dealt with such aspects in detail in the impugned judgment holding that the plea of adverse possession taken by the plaintiffs in civil suit filed by Surat Singh etc., defendants No.11 to 13 in the present suit, the earlier suit was for grant of permanent injunction wherein Surat Singh etc., defendants No.11 to 13 had claimed themselves to be sub-tenants under the present plaintiffs Parsandi Devi and others. Surat Singh etc., were not owners of the suit land, therefore, plea of adverse possession taken in a suit filed by sub-tenants for permanent injunction against the tenants does not forfeit the tenancy rights of the tenant in the land held by him under other persons who were not a party to that litigation. With regard to this very plea taken by plaintiffs Parsandi Devi and others, in

the earlier suit filed by them for declaration against Mula etc., it was observed that the said suit had been withdrawn after the plaintiffs had failed to get ad-interim injunction upto the appellate stage against defendants No.11 to 13 and referring to judgment **Ajaib Singh & Ors. Vs. Kailash Dass & Ors.**, (P&H) 1987 (1) LLR 388, it was observed that plea of adverse possession taken in the earlier suit but given up later on would not operate as res-judicata in subsequent proceedings.

20. With regard to plea of adverse possession taken by the present plaintiffs who were defendants in the suit filed by Mula etc., against them on 14.11.1975 for possession of that land, in the written statement before amendment of the plaint of the suit that was held to be not affecting the rights of the present plaintiffs to hold the suit property as tenants and that would not forfeit their rights of tenancy in the suit land for several reasons, firstly because originally in that suit, Mula etc., had claimed possession of some other land than the land now involved and secondly after the amendment of the plaint, in that suit the present plaintiffs who were defendants in that suit had not stuck to their earlier position and they had acquired title to the suit property by way of adverse possession, rather, they had filed a fresh written statement giving up their earlier plea of adverse possession and claiming themselves to have acquired occupancy rights to the suit property and consequently, becoming full fledged owners of the suit land in view of Section 8 of the Act of 1887 read with provisions contained in Act of 1953. It was observed that after the amendment in the plaint, the defendants had a

right to change a defence, although effect of any admission made in the earlier written statement may be taken into consideration while appreciating the evidence. In the original written statement filed, the defendants had denied title of the plaintiffs to the suit land asserting their own title by way of adverse possession. However, after amendment of the plaint in the written statement filed to the amended plaint, the defendants had claimed that they had become owners of the suit land since their occupancy rights had resulted in full fledged ownership being bestowed upon them. Learned Addl. District Judge, has referred to various judgments in that regard in support of the conclusion drawn that relationship of landlord is not put to an end by the tenant setting up hostile title in himself. He does not cease to be a tenant and rather he is estopped from denying title of the landlord as long as he continues to be in possession in pursuance of his tenancy and that the tenant must give up possession as such before claiming adverse possession.

21. Learned Addl. District Judge has rightly noted that a very strong presumption of the implied promise not to eject a tenant showing existence of occupancy tenancy can be drawn since the tenancy had lasted for a long time during which there has been rise in prices of agricultural produce and no effort was made by the landlord to enhance the rent. The landlord had not established that at the time of creation of tenancy the intention was to grant it only for a limited period whereas the revenue record from 1909-1910 reflects Rati Ram son of Molar who was predecessor in interest of the present plaintiffs and after his death, the

present plaintiffs to be in continuous possession of the suit land as tenants 'Bashrah Parta Malkan Billa' and there is nothing on record to show that the lagan was ever increased when price of agricultural produce have gone up immensely. Further the owners/landlords Mula etc., had sought eviction of the present plaintiffs from the suit land for the first time in the year 1975 for the reason that by taking plea of adverse possession, the present plaintiffs have forfeited their rights of tenancy in the suit land. The Appellate Court was justified in concluding that since the plaintiffs had acquired occupancy rights in the suit property under Section 8 of the Act of 1887 and had become full owners thereof in view of provisions contained in Act of 1953, the contesting defendants had ceased to be owners of the suit land.

22. It has been pointed out that this appeal has been filed by Surat Singh, Charam Chand, Ram Dayal and Surja who were sub-tenants in the suit land under the plaintiff Smt. Parsandi Devi and others, therefore, they cannot possibly raise any objection with regard to the plaintiffs being occupancy tenants in the suit land and their consequently acquiring the ownership rights in view of Act of 1953. The owners of the land namely Mula and others have not filed any appeal before this Court.

23. With regard to judgments referred to by learned counsel for the parties, learned counsel for the appellants had relied upon judgment **Puran & Ors. Vs. Gram Panchayat, Faridabad**, 2006 (2) RCR (Civil) 164, that judgment is clearly distinguishable because as per facts of the authority, the dispute between the parties with regard to nature of the land

whether it was shamlat vesting in the village Gram Panchayat or otherwise being in possession of plaintiffs in that suit since the time of their ancestors and plaintiffs acquiring ownership rights under Section 3 of Act of 1953, there the plaintiffs or their predecessors were not recorded as occupancy tenants in the revenue record and other necessary ingredients were also not fulfilled whereas, in the present case, learned Ist Appellate Court by giving proper reasoning and referring to the evidence available on the record has rightly come to the conclusion that the nature of possession of the plaintiffs was that of occupancy tenants and as a result of coming into being of plaintiffs plaintiffs Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. The plaintiffs have become owners of the suit land whereas defendants No.1 to 6 the original owners/landlords have ceased to have title to the suit land.

24. Learned counsel for the appellants have contended that when an occupancy tenant acquires ownership rights under the Act of 1953, then such tenant is required to pay compensation to the original owner/landlord which has neither been assessed nor got paid from the present plaintiffs. However, it may be mentioned that the appellants are themselves sub-tenants under the plaintiffs and they have no locus standi to raise any objection that for want of payment of compensation, such rights cannot be acquired by the plaintiffs. Section 4 of the Act of 1953. provides that any landlord whose rights have been extinguished under under Section 3 may, within twelve months from the appointed day, apply to the Collector, in such form as may be prescribed for the determination

of the amount of compensation payable to him by the occupancy tenant. As per proviso, the Collector may entertain the application after the expiry of the said period of twelve months if he is satisfied that application was prevented by sufficient cause from filing the application in time. Therefore, only the owners/landlords could have approached the Collector seeking compensation and as it transpires from the record, they have not done so. Even otherwise, in terms of proviso to Section 4 of the Act of 1953, the Collector may entertain the application after expiry of the period of 12 months. The owners of the land may approach the Collector in that regard, who may then dispose of such application filed on behalf of the owners/landlords by condoning the delay if he feels like doing so and then assess the compensation payable by the plaintiffs to the defendants-owners/landlords.

25. Counsel for the respondents had also placed reliance upon various judgments Amin Lal Vs. Financial Commissioner (Revenue) & Ors., 1971 RLR 674, Muni Ram & Ors. Vs. Phullia and Lalu, 1974 PLJ 369, Daulat Ram and Nepal Singh Vs. Payare Lal and Bhagwan Sahai, 1975 PLJ 12, Shiv Charan Vs. Financial Commissioner, Haryana & Ors. 2004 (4) RCR (Civil) 543 and Jodh Singh & Anr. Vs. Smt. Shanti Bai, 2009 (1) RCR (Civil) 208.

26. The judgment passed by the Ist Appellate Court is quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therein which might have called for interference by this Court in

Regular Second Appeal. No substantial question of law arises in this appeal. Therefore, both the appeals are found to be without merit and are dismissed accordingly.

26.05.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No