

2023:PHHC:152651

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4133 of 2018
Date of Decision: 30.11.2023**

Hari Singh Ruhel

.....Appellant.

Versus

Hukam Chand

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Inder Pal Goyat, Advocate
for the appellant.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree as passed by learned Additional Civil Judge (Senior Division), Panipat (for short 'the trial Court') on 17.11.2016, qua the dismissal of the Civil Suit filed by the appellant-plaintiff (here-in-after to be referred as 'the plaintiff') against the respondent-defendant (here-in-after to be referred as 'the defendant') and the judgment and decree handed down by learned District Judge, Panipat (for short 'the Lower Appellate Court') on 08.12.2017, whereby the appeal filed by the plaintiff against the judgment and decree dated 17.11.2016, has also been dismissed, he (plaintiff) has preferred the instant Regular Second Appeal to lay challenge to the same.

2. As per the brief factual-matrix culminating in the filing of the present appeal, the plaintiff instituted the afore-referred Civil Suit against the defendant for seeking a decree for declaration to the effect that he was

owner in possession of the suit land, with the further prayer for grant of the consequential relief of permanent injunction to restrain the defendant from interfering in his possession over this land, while averring that earlier, his father had been continuing in possession of the said land since 1965-66 and thereafter, he had been in cultivating possession over the same, without paying any amount except the land revenue and thus, his possession on this land, as the occupancy tenant, for more than 30 years, had ripened into his ownership over it. However, the trial Court dismissed the above-said Civil Suit and the appeal filed by the plaintiff has also been dismissed, as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the appellant-plaintiff in the instant appeal, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the appellant-plaintiff has contended that the plaintiff has led sufficient evidence on the record to prove that he has been continuing in possession over the suit land for more than 30 years and he and his father had never paid any amount, except the land revenue, to anyone and thus, he was an occupancy tenant on this land and by virtue of the provisions contained in Section 5(2) of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 (for short, 'the Act of 1952') and the Punjab Tenancy Act, he has become the owner of the suit land but both the Courts below have wrongly declined the relief claimed in the afore-said Civil Suit and hence, the impugned judgments and decrees are not legally sustainable and deserve to be set-aside. To buttress his contentions, he has

placed reliance upon the judgment passed by the Co-ordinate Bench in **Mauj Khan and others Vs. Deen Mohd etc, 2017(1) R.C.R (Rent) 31.**

5. However, the above-raised contentions are bereft of any force because both the Courts below have concurrently held that the plaintiff did not adduce any evidence on the record to show that earlier, his father was in cultivating possession over the suit land since 1965-66 and later-on, he came in possession thereof and rather, he was reflected as ‘*Gair Marusi*’ on the said land in the *Jamabandi* pertaining to the year 1989-90. Further, the Lower Appellate Court has mentioned in para No.13 of its judgment that vide the order Exhibit P12 passed by the competent Authority, the entries of *Khasra-Girdawri* were ordered to be corrected/entered in the favour of the plaintiff with effect from the year 1985, as ‘*Gair Marusi*’ and in para No.12 in the said judgment, it has also been observed that admittedly, the plaintiff had not sought the declaration from any revenue Court regarding his being an occupancy tenant.

6. To add to it, the Lower Appellate Court has also specifically mentioned in para No.11 of its judgment that in the *Jamabandi* Exhibit P6 pertaining to the year 1994-95, Column No.9 had been left blank and as per the *Jamabandis* for the years 1999-2000 and 2007-2008, the plaintiff was ‘*Gair Marusi*’ over the suit land and in Column No.9 therein, the words ‘*Lagan Mushkuk*’ had been recorded. These words literally mean that the payment of rent/land revenue/cess was doubtful. It is pertinent to mention here that to claim occupancy rights in any land, as envisaged under Section 5(2) of the Act of 1952, the tenant in cultivating possession over the same,

has to prove that he had not been paying any rent beyond the amount of land revenue/cess chargeable in respect thereof and in the instant case, the afore-discussed entries of the relevant revenue record do not lend any support to the plaintiff to substantiate the fulfilment of the above-referred pre-requisite by him. Moreover, in **Appeal (Civil) No.5517 of 2003 titled as 'Puran and others Versus Gram Panchayat, Faridabad' decided on 30.01.2006**, the Apex Court has made the following observations:-

“10. x x x x

Section 3 of the Act relates to vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords. It is evidence therefrom that the right, title and interest shall be deemed to vest only in an 'occupancy tenant'. Occupancy tenant is defined under section 2(f) as meaning a tenant who, immediately before the commencement of the Proprietary Rights 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. Admittedly, neither the appellants nor their predecessors were recorded as occupancy tenants in the revenue records immediately before the commencement of the Proprietary Rights Act, nor did they obtain a right

of occupancy in respect of the said land either by agreement with the landlord or through a court of competent jurisdiction or otherwise after the commencement of the Act. The appellants, therefore, do not answer the definition of 'occupancy tenant' under the Proprietary Rights Act. Consequently, they cannot derive any benefit under Section 3 of the said Act.”

6. In the light of the afore-quoted observations, it has to be held that the plaintiff has not been able to prove his averments qua his having been in cultivating possession over the suit land, as an occupancy tenant, for more than 30 years so as to claim his ownership over the said land in terms of the above-mentioned provisions of the Act of 1952. The verdict rendered by the Co-ordinate Bench in **Mauj Khan and others (supra)**, is of no avail to the plaintiff in view of the afore-cited observations as made by Hon’ble Supreme Court.

7. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the same are hereby upheld and the appeal in hand, being *sans* any merit, stands dismissed.

November 30, 2023

Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes