

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4368-2018 (O&M)
Reserved on: 31.07.2023
Date of decision: 14.09.2023

PREM CHAND

..Appellant

Versus

RAJBIR SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B. Sharma, Advovate
for the appellant.

Mr. Ashok Kaushik, Advocate
for respondent No.1 to 3.

ANIL KSHETARPAL, J.

1. The correctness of the concurrent findings of the fact arrived at by the Courts below is assailed by the plaintiff in this second appeal. His suit for grant of decree of declaration that he has become owner of the property in view of provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as the '1952 Act'), because he was previously in possession as an occupancy tenant, has been dismissed.

2. The suit land is measuring 4 kanals comprised in Killa No.22/1 in rectangle No.18, located in village Prithla. While claiming that previously the land was in the occupation of Sh. Yadu and Sh. Siya Ram for the last 70-80 years as *marusi* tenant claims that he has become owner.

3. On the other hand, the defendants while contesting the suit

have claimed that the entries in the revenue record, in the name of Sh. Yadu

and Sh. Siya Ram were illegal and wrong and the plaintiff or his predecessor in interest have no concern with the suit property.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and photocopy of the record produced by the learned counsel representing the appellant.

5. The learned counsel representing the appellant contends that the plaintiff has successfully proved that his predecessors were in possession of the property for the last 70-80 years and therefore, in view of the provisions of 1952 Act, they have become owner of the same.

6. On the other hand, the learned counsel representing the respondent No.1 to 3 contends that there is no scope for interference in the concurrent findings of the fact.

7. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties with reference to the photocopy of the revenue record produced by the learned counsel representing the appellant.

8. At the outset it is important to note that in the revenue record the status of Sh. Yadu and Sh. Siya Ram are recorded to be *gair marusi*. The literal meaning of expression '*gair masuri*' is non-occupancy or in the other word the persons who do not have occupancy rights. In the column of rent, the entry is *Bashre Malkan Bawajah Kast Darina*. The expression '*Kast Darina*' has been examined in **Ram Kishan and others Vs. Jagdish and others, 2018(2) PLR 149**. The expression '*Kast Darina*' itself shows that the persons in possession are not tenant because they consider themselves to be the owner of the same. This entry is continuing from 1940-1941. In fact, in

Ram Kishan's case (supra), this Court has examined identical entry in the

revenue record and came to a conclusion that such person does not have status of occupancy tenant. Moreover, the revenue record has the presumption of correctness unless rebutted. The entry in the favour of the appellant and his predecessor is *gair marusi*. The plaintiff was required to lead evidence to prove that such entry is incorrect, however, he failed to prove the same.

9. Moreover, before divesting title from the owner, the person who was claiming such divesting is required to prove his case on preponderance of probabilities. The provisions of Section 5, 6 and 8 of the Punjab Tenancy Act, 1887, is required to be construed narrowly before an order divesting the title of the owner is passed. In this case, the appellant has miserably failed to prove the same.

10. Keeping in view the aforesaid discussion, finding no merit, the appeal is dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

September 14th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*