

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

RSA No.668 of 1991 (O&M)

Date of Order:29.02.2024

Haryana State through Collector and another

.Appellants

Versus

Tejpal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Jaspal Singh Pannu, AAG, Haryana
for the appellants.**

**Mr. Hemant Sarin, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. In this second appeal, the State of Haryana (defendant in the suit) assails the correctness of the judgment and decree passed by the first appellate court which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The respondents (plaintiffs before the trial court), filed a suit for grant of decree of declaration that they are in possession of 35 kanals and 17 marlas land for more than 100 years and they have acquired occupancy rights under Section 5 and 8 of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the 1887 Act'). It was claimed that at the time when they were inducted in the land it was promised that they will never be evicted and the rate of rent has also not been enhanced. As per Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (hereinafter referred to as 'the 1953 Act'), they have become owners of the property.

4. The State of Haryana contested the suit claiming that the civil court has no jurisdiction because the property is an evacuee property which is required to be utilized for settling the displaced persons on account of partition of the country. It was also claimed that the plaintiffs are unauthorised occupants over the suit land and they were never inducted as tenants.
5. The trial court dismissed the suit after coming to the conclusion that the plaintiffs have failed to prove that they were inducted as 'Marusi' (occupancy tenant), however, the first appellate court has reversed the judgment and decree passed by the trial court. The correctness of the aforesaid judgment has been challenged in this appeal.
6. In order to prove their case, the plaintiffs have produced copies of jamabandies from the year 1943-1944. The summary of the revenue record produced by the plaintiffs is as under:-

Exhibit	Details		Ownership	Cultivation	Remarks
Ex.P1= Ex.D8	Jamabandi	for	Bakaya Arazi Matruka Bila Allot Shuda	Duli Gair Marusi	Basharah Malkan Bawajah Kasht Darina
Ex.P2 Ex.D7	Jamabandi	for	-do-	-do-	-do-
Ex.P3 Ex.D6	Jamabandi	for	-do-	-do-	-do-
Ex.P4	Jamabandi	for	-do-	-do-	-do-
Ex.P5 T	Jamabandi	for	-do-	-do-	-do-
Ex.P6 Ex.D3 T	Jamabandi	for	Altaf	-do-	Basharah Malkan
Ex.P7 T	Jamabandi	for	Altaf		-do-
Ex.P8 T	Khatauni Istemal	on	Bakaya Arazi Matruka Bila	Duli Gair Mumkin	-do-

	consolidation	Allot Shuda		
Ex.P9 T	Naksha Hakdaran 1959-60 on consolidation	Arazi Matruka Bila Allot Shuda	-do-	
Ex.P10	Nakal Register Karvai Istemal on consolidation	-do-	-do-	
Ex.P11 T	Nakal Khatauni Paimaish	Bakaya Araxi Matruka Bila Allot Shuda	-do-	
Ex.P12 T	Jamabandi for 1951-52	Bakaya Araxi Matruka Bila Allot Shuda	-do-	
Ex.P13	Khasra Girdwari 1984-85	Bakaya Araxi Matruka Bila Allot Shuda		Bashareh Darina Kasht
Ex.P14	Jamabandi for 1951-52	Nawab Wahid Rahim Khan (illegible)	Puran & Duli Gair Mumkin	Bashareh Malkan

7. A perusal of the jamabandi for the year 1943-1944, proves that the plaintiffs' predecessor was treating the suit land as their own. The expression used in the remarks column is “Basharah Malkan” (that means the person in possession considers that he is an owner). The same is the entry in the remarks column of the jamabandi for the year 1951-1952. From the year 1960, the entry in the remarks column of the jamabandi is “Basharah Malkan Bawajah Kasht Darina”. Again the literal meaning of the aforesaid expression is that the defendants are treating themselves to be owner because of their possession over a period of long time.

8. The plaintiffs not led any evidence to prove that they have paid any lease money to the State during all these years.

9. Section 5 and 8 of the 1887 Act 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 thereof 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 he 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 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 there for 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 has 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.”*

10. It is evident that the plaintiffs can at the most claim their case under Section 5(2) of the 1887 Act which requires the tenant to prove that he has continuously occupied the land for a period of 30 years and paid no rent

and therefore beyond the amount of land revenue thereof and rates and cesses for the time being chargeable. Thus, the requirement is that there should be some evidence to prove payment of rent which is not beyond the amount of land revenue and the rates and cesses for the time being chargeable. In this case, there is no evidence to that effect. The respondents are recorded as 'Gair Marusi'. The literal meaning of expression 'Gair' is non and 'Marusi' means 'occupant'. In common parlance, this expression is used to depict that the occupant of the agricultural land is not a occupancy tenant. Thus, the respondents were never recorded as occupancy tenants.

11. In *Jaleb Khan and others vs. Commissioner, Gurgaon Division Gurgaon and others, 2010 (1) PLR, 111*, a Coordinate Bench held that a person who has been recorded as 'Gair Marusi' can never get status of occupancy tenant or a 'Marusi'

12. The plaintiffs in alternative claim status of occupancy tenant under Section 8 of the 1887 Act. However, no evidence has been led to prove that the plaintiffs had right of occupancy on any other ground other than the grounds specified in Sections 5 to 7 of the 1887 Act.

13. Moreover, it is evident that the first appellate court was impressed by the plaintiffs long period of continuous possession. It has been recorded that the plaintiffs are in possession since the year 1919-1920. It is evident that the first appellate court has overlooked Section 9 of the 1887 Act, which reads as under:-

9. Right of occupancy not to be acquired by mere lapse of time.—No tenant shall acquire a right of occupancy by mere lapse of time.

14. There is a specific provision to the effect that by mere lapse of

time no tenant shall acquire the right of occupancy.

15. The first appellate court has also overlooked the fact that the plaintiffs failed to prove that they were inducted as tenant or they paid the rent at any point of time. Creation of tenancy can either be by a bilateral contract or creation of statute. In this case, the plaintiffs have failed to prove as to when and who inducted them as tenant. They have also failed to prove that they paid a single penny to the Government as lease money at any point of time.

16. Keeping in view the aforesaid facts and discussion, this court is left with no choice but to set aside the judgment and decree passed by the first appellate court and that of the trial court is restored.

17. The appeal is allowed.

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

February 29, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO