

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

RSA-3145-1994
Date of decision: 30.04.2024

STATE OF HARYANA

..Appellant

Versus

BIHARI LAL & ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Pannu, AAG, Haryana.

Mr. Amit Jain, Sr. Advocate
with Mr. Varun Parkash, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the State of Haryana assails the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs suit for the grant of decree of declaration that plaintiff No.2 has become owner of the property being occupancy tenant by virtue of the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (hereinafter referred to as the '1953 Act') read with Punjab Tenancy Act, 1887 (hereinafter referred to as the '1887 Act').
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Sadhu Din son of Sh. Suba was owner of the land measuring 112 bighas 0 biswas located in village Kajalheri, Tehsil Fatehabad. He executed a perpetual lease deed on 23.05.1928 in favour of Sh. Bhura son of

Sh. Hardan, predecessor in interest of the plaintiffs. As per the lease deed, the lease money was fixed as 7 Rupees, 4 Annas and 9 *Pai* per annum. The Courts below have read the lease amount to 7 Rupees, 4 Annas and 9 Paisa, however, that would not make any difference.

4. On partition of the country in the year 1947, the owner Sh. Sadhu Din migrated to the area, which now forms part of an independent country Pakistan. Following the consolidation of holdings, land measuring 25 kanal and 8 marlas was allocated to the plaintiffs along with other land to other co-sharers. Plaintiff No.2 claims to have become an occupancy tenant of the land under Section 8 of the 1887 Act and its owner by virtue of 1953 Act. He also assails the correctness of the action of the State to recover amount of Rs.4,168.75/- on account of illegal lease of the property. The State of Haryana while contesting the suit claims that the property had become evacuee property, and that the Civil Court has no jurisdiction. The plaintiffs status as occupancy tenant was denied and it was claimed that as per Section 2(J) of the Administration of Evacuee Tenancy Act, 1950 (hereinafter referred to as the '1950 Act'), the plaintiff has not obtained the permission of the custodian to continue in possession, hence, liable for ejectment.

5. Both the Courts below have decreed the suit while interpreting the lease deed dated 23.05.1928 and receipts Ex.P-1 and Ex.P-2.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

7. As per Chapter II of the 1887 Act, the occupancy tenant has been dealt with. Section 5, 6, 7, 8, 9, 10 and 11 of the 1887 Act, which forms part of Chapter 2 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 Paing 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.

6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.—*A tenant recorded in a record-of-rights sanctioned by the Local Government before the twenty first day of October, 1868, as a tenant having a right of occupancy in*

land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act.

7. Right of occupancy in land taken in exchange.— If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.

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.

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.

10. Right of occupancy not to be acquired by joint owner in land held in joint ownership.— In the absence of a custom to the contrary no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.

11. Continuance of existing occupancy rights.— Notwithstanding anything in the foregoing sections of this Chapter, a tenant who immediately before the commencement of this Act has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall, when this Act comes into force, be held to have, for all the purposes of this Act, a right of occupancy in that land under the enactment specified in the same line of the second column of the table :—

PUNJAB TENANCY ACT, 1868 (XXVIII 1868)		THIS ACT		
FIRST COLUMN		SECOND COLUMN		
Section	Clause	Section	Sub-Section	Clause
5	(1)	5	(1)	(a)
5	(2)	5	(1)	(b)
5	(3)	5	(1)	(c)
5	(4)	5	(1)	(d)
6	...	6	...	...
8	...	8	...	...

8. The learned counsel representing the respondents submits that the plaintiff claims right of occupancy under Section 5(2) of the 1887 Act, which provides that the tenant has continuously occupied the land for a period of 30 years and paid no rent beyond the amount of land revenue thereof and rates and cesses for the time being chargeable thereon. He relies upon the receipts Ex.P-1 and Ex.P-2. A careful perusal of Ex.P-1 and Ex.P-2 proves that these receipts are not with respect to payment of amount of land revenue and rate of cesses chargeable thereon. Ex.P-1 is a receipt of Rs.750.65/- with respect to payment of water charges including *chowkidara* with respect to crop Rabi-1981. Ex.P-2 is again a receipt of Rs.710.82/- with respect to payment of water charges including *chowkidara* with respect to crop Kharif-1981. Thus, both the Courts below have erred in reading Ex.P-1 and Ex.P-2. Moreover, as per the lease deed, the lease amount is 7 Rupees, 4 Annas and 9 *Pai*, which is equivalent to Rs.7.28/-. None of the receipts is with respect to the aforesaid amount.

9. Apart from these two receipts, the plaintiff has not produced any documentary evidence to support his claim that he paid the amount of land revenue or the lease money with the government.

10. As per the revenue record, in consistent jamabandies, the plaintiff is recorded in the cultivating column as '*Gair Marusi Tenant*'. He is in possession of the property by virtue of the lease deed executed in his favour on 23.05.1928. He is not recorded as occupancy tenant. If we dissect the expression '*Gair Marusi*', it consist of two separate words namely '*Gair*'

and 'Marusi'. The meaning of word 'Gair' is "Non", whereas, 'Marusi' is "Occupancy". Thus, the plaintiff is recorded as non-occupancy tenant.

11. A perusal of jamabandies from the year 1959-1960 produced by the plaintiff, it becomes evident that the amount of land revenue recorded in the revenue record is Rs.2.44/-. It is not the case of the plaintiffs that they have paid Rs.2.44/- per year and not more than the aforesaid amount.

12. Section 8 of the 1887 Act provides for establishment of right of occupancy on grounds other than those expressly stated in the Act. Both the Courts below have relied upon the judgment passed in **Muni Ram and others Vs. Phullia and Lalu, 1974 PLJ 369**. This judgment relates to interpretation of Section 8 of the 1887 Act and not Section 5. Section 8 of the 1887 Act as already noticed is relating to claim of the status of occupancy on grounds other than those expressly stated in the Act. It is not the case of the plaintiffs that they have acquired the right of occupancy under any other Act.

13. Furthermore, in the revenue record from the year 1947, the property is recorded as abandoned land because of migration of individuals of the Muslim faith. In these circumstances, it vests in the State.

14. Furthermore, it is necessary to interpret the provisions of the Act strictly before divesting the title of the immovable property. Section 9 of the 1887 Act provides that right of occupancy cannot be acquired by mere lapse of time. Both the Courts below were impressed by the fact that the plaintiffs have continued in possession from the year 1928 by virtue of perpetual tenancy. The attention of the Court has not been drawn to any provision of 1887 Act, which provide that a perpetual tenant shall be occupancy tenant.

15. Keeping in view the aforesaid discussion, the appeal is allowed. The judgments passed by both the Courts below are not sustainable, hence, set aside.

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

April 30th, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No