



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5886 of 2019 (O&M)

Date of Order:21.05.2024

Harwinder Singh and others

..Appellants

Versus

Jasvir Singh and others

..Respondents

RSA No.3325 of 2019 (O&M)

Kamaljit Singh

..Appellant

Versus

Mohinder Singh (since deceased) through LRs
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Bansal, Advocate, for the appellant(s)

ANIL KSHETARPAL, J

C.M.No.16830-C-2019 in RSA-5886-2019

1. For the reasons mentioned in these applications, which are supported by the affidavits, the delay of 94 days in re-filing the appeal is condoned.

2. CM stands disposed of.

C.M.No.10866-C-2023 in RSA NO.5886-2019

C.M.No.10877-C-2023 in RSA NO.3325-2019

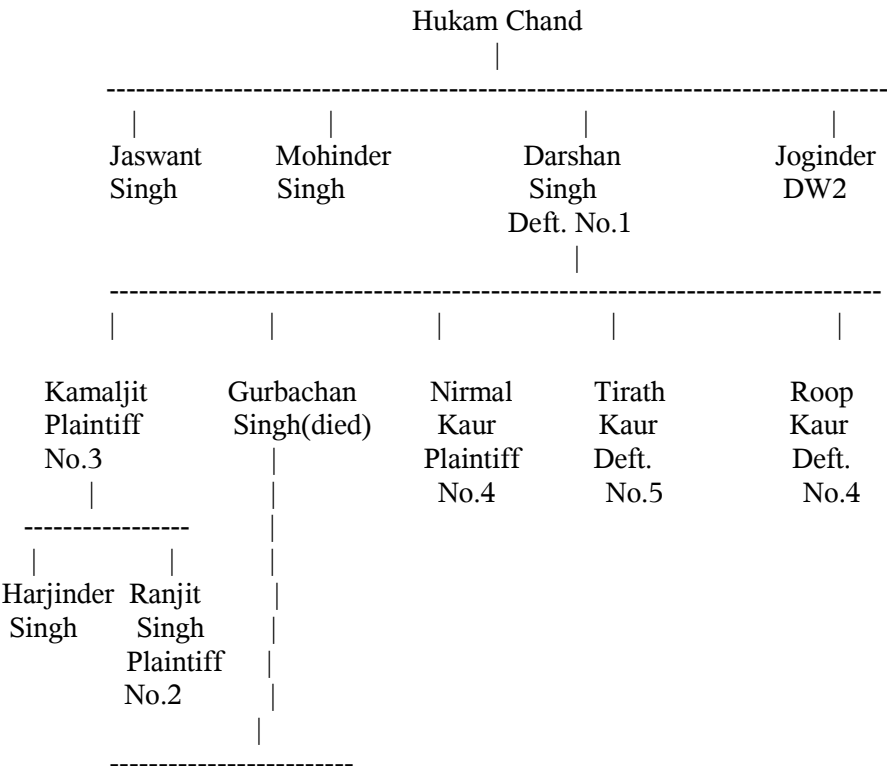
3. For the reasons stated in these applications which are supported by the affidavits, the applications for bringing on record the legal representatives of deceased late Smt. Tirath Kaur [appellant no.5 in RSA No.5886-2019 and respondent no.7 and 1(c) in RSA No.3325-2019] mentioned in paragraph 2 of these applications, are allowed, subject to all the just exceptions.



4. The amended memo of parties is taken on record.
5. CMs' stand disposed of.

MAIN

6. With the consent of the learned counsel representing the appellant, two connected regular second appeals though arising from separate suits shall stand disposed of by a common order.
7. In both the appeals, the plaintiffs are in regular second appeal.
8. Heirs of Sh. Kamaljit Singh filed Civil Suit on 21.10.2009 (Civil Suit No.1092 of 2010) claiming decree for grant of declaration to the effect that the plaintiffs and defendants no.1 to 4 are coparceners in the suit property. Sh. Kamaljit Singh filed another suit for grant of decree of declaration that the tubewell/motor connection (electricity connection) of tubewell installed in Rect. No.22, khasra no.10/1(6-0) is joint for the plaintiff(s) as well as defendants.
9. In order to understand the controversy involved in the present case, pedigree table of the family is extracted as under:-





Bhupinder Singh	Jasbir Singh
Def. No.2	Def. No.3

10. Sh. Mohinder Singh, defendant no.1, transferred the suit land in favour of his grand children namely, Sh. Bhupinder Singh and Sh. Jasbir Singh sons of pre-deceased son Sh. Gurbachan Singh on 23.09.2009, which was subject matter of challenge in the Civil Suit no.1092 of 2010, on the ground that the suit property was ancestral coparcenary property. Hence, the plaintiffs have pre-existing rights in the same. Civil Suit No.1092 of 2010 was decreed by the trial court, whereas Civil Suit no.1109 was dismissed by the trial court. Two first appeals were filed against the aforesaid. The First Appellate Court by separate judgments passed on the same day has dismissed the appeal filed by Sh. Kamaljit Singh, whereas accepted the appeal filed by the defendants, namely, Sh. Bhupinder Singh and Sh. Jasbir Singh.

11. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book.

12. It has come on record that Sh. Hukam Chand was in possession of the property as an occupancy tenant. He died somewhere in the year 1951/1952, however, the exact date of his death has not come on record. The First Appellate Court has found that Sh. Jaswant Singh, Sh. Mohinder Singh, Sh. Darshan Singh and Sh. Joginder became owners of the property in view of the enactment of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as 'the 1952 Act'). Hence, the property in the hands of Sh. Mohinder Singh was not ancestral coparcenary property.

13. The learned counsel representing the appellants while referring

to Section 2(f) of the 1952 Act submits that the occupancy tenant includes the predecessor and successor-in-interest of an occupancy tenant. He submits that Sh. Hukam Chand will be deemed to have become owner of the property, hence, the plaintiffs being grand children were entitled to claim that the suit property was ancestral coparcenary property. He further submits that Sh. Jaswant Singh, Sh. Mohinder Singh, Sh. Darshan Singh and Sh. Joginder became owner of the property in the year 1959 and not in the year 1952.

14. This court has considered the submissions of the learned counsel representing the appellants.

15. Section 2(a), 2(f), 3 and 4 of the 1952 Act are extracted as under:-

2. Definition – *In this Act, unless the context otherwise requires –*

a. “Appointed day” means –

i. in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, on the 15th day of June, 1952.

ii. In relation to any tenant who obtains a right of occupancy in any land after commencement of this Act, the date on which he obtains such right of occupancy;

- | | | | | |
|-----|----|----|----|----|
| (b) | XX | XX | XX | XX |
| (c) | | XX | XX | XX |
| (d) | XX | XX | XX | XX |
| (e) | | XX | XX | XX |



(f) “occupancy tenant” means a tenant who, immediately before the commencement of this 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.

Section 3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords— *Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-*

(a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector, within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;



(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of land;

(d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.

Section 4. Determination of compensation payable to landlord.— *Any landlord whose rights have been extinguished 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:*

Provided that 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.

(2) On receipt of an application under sub-section (1), the Collector shall issue notice to the parties concerned and after giving the parties an opportunity of being heard and after making such inquiry as may be prescribed, shall make an award determining the amount of compensation payable by the occupancy tenant to the landlord in accordance with the provisions of section 5.

(3) Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decided such dispute and if the Collector finds that more than one person is entitled to compensation, he shall apportion the amount thereof amongst such persons.

(4) Where the compensation is payable to a minor or to a person having a limited interest the Collector may make



such arrangements as may be equitable having regard to the interest of the minor, the parties concerned and their reversioners.”

16. With respect to first submission, it may be noted here that Section 2(f) only defines “occupancy tenants” which includes predecessor and successor-in-interest of an occupancy tenant. However, the vesting of proprietary right is on the appointed day as per Section 2(a)(i) i.e. (15.06.1952). Except the rights created by the Statute under the 1952 Act, these four brothers would not have become owner of the property. Section 2(f) of the 1952 Act does not anywhere provide that predecessor-in-interest of the occupancy tenant would be deemed to be owner on the appointed day . The attention of the Court has not been drawn to any provision which provides that the 1952 Act would have a retrospective effect. Consequently, Sh. Jaswant Singh, Sh. Mohinder Singh, Sh. Darshan Singh and Sh. Joginder became owner of the property on 15.06.1952.

17. Section 3 of the 1952 Act provides that vesting would take place from the appointed day if the occupancy tenant was in possession of the property on the day of enactment of the Act. Moreover, Section 4 of the 1952 Act enables the landlord to file an application within a period of twelve months from the appointed day to apply to the Collector for determination of compensation which in turn shall be payable by the tenant in accordance with Section 6 of the 1952 Act, which is extracted as under:-

*6. **Payment of Compensation**-The compensation awarded under this Act shall either be paid in cash or be deposited with Collector by the occupancy tenant within a period of three months of the date of the award;*



Provided that the Collector may, having regard to the amount of compensation or for other reasons and after recording his reasons for so doing, allow the occupancy tenant to pay the compensation in such six monthly instalments, not exceeding in any case six years, as he thinks fit.

(2) Where the occupancy tenant makes a default in the payment of compensation in accordance with the terms of the award, the amount due may be recovered in the same manner as an arrears of land revenue.

18. Keeping in view the aforesaid facts, there is no occasion for this court to hold that Sh. Hukam Chand had become owner of the property. In fact, Sh. Jaswant Singh, Sh. Mohinder Singh, Sh. Darshan Singh and Sh. Joginder became owner of the property on the appointed day i.e. 15.06.1952.

19. The second argument of the learned counsel representing the appellants also lacks substance because the Act notifies appointed day i.e. 15.06.1952. The notification dated 24.06.1959 is only for the purpose of sanction of mutation in favour of the occupancy tenant. The attention of the Court has not been drawn to any subsequent notification issued by the Government to change the appointed day.

20. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

21. Both the appeals are dismissed.

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

May 21, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO