



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1268 of 2021 (O&M)

Date of Order:23.05.2024

Bahadur (since deceased) through his LRs and others

.Appellants

Versus

Om Parkash and others

..Respondents

RSA No.1278 of 2021 (O&M)

Bahadur (since deceased) through his LRs and others

.Appellants

Versus

Rameshwari (since deceased) through her LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate
for the appellants.

Mr. Ashok S. Chaudhry, Addl.A.G., Haryana

ANIL KSHETARPAL, J

C.M.No.5233-C-2021 in RSA No.1268-2021

C.M.No.5252-C-2021 in RSA No.1278-2021

1. For the reasons mentioned in these applications, which are supported by the affidavits, the delay of 834 and 824 days in re-filing the appeal is condoned.

2. CMs stand disposed of.

MAIN

3. With the consent of the learned counsel representing the appellants, two connected regular second appeals shall stand disposed of by this common order.



4. In these regular second appeals, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for grant of decree of declaration that they have become owners in possession of their respective share of the suit land in view of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as 'the 1952 Act').

5. The plaintiffs filed a suit claiming that they are in uninterrupted possession of the property for the last 50 years and they have become owners because they are the occupancy tenants as provided in Section 5, 6, 7 and 8 of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the 1887 Act'). It was claimed by the plaintiffs that they were given the suit land to make it cultivable with a promise that they shall never be evicted from the land.

6. The defendants did not contest the suit. However, upon appreciation of the evidence, both the courts dismissed the suit.

7. From careful perusal of the judgment passed by the First Appellate Court, it is evident that some of the respondents were represented before the First Appellate Court.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

9. The learned counsel representing the appellants submits that in view of Section 5(2) of the 1887 Act, the plaintiffs have proved that they have become occupancy tenants. He submits that the plaintiffs are proved to be in continuous possession of the disputed land for 30 years and they have paid no rent for using the suit property apart from the amount of the land-



revenue and rates and cesses for the time being chargeable thereon.

10. This court has considered the submissions of the learned counsel representing the parties.

11. Section 5 of the 1887 Act, reads 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.”

12. It is evident that sub-section (2) of Section 5 of the 1887 Act is applicable only if it is proved that the appellants are in possession of the property as tenants. The learned counsel representing the appellants has produced various jamabandies. From perusal of the aforesaid jamabandies, it is evident that in the cultivation column, the name of the predecessor-in-interest of the plaintiffs is recorded as co-sharers. In the revenue record, the plaintiffs' predecessors are reflected to be in possession of the suit property as a tenant. Section 5(2) of the 1887 Act, would come in play only if the tenant proves that he has continuously occupied the land for 30 years and fulfills all other conditions as specified in the provision. In this case, the plaintiffs have failed to prove that they have been in possession of land as tenants. The revenue record clearly shows that their possession on the disputed land is as co-sharers.

13. This court has perused the jamabandi for the year 1966-67 which show that Sh. Ganesha and Sadhu were recorded as the co-sharers in the cultivation column. The jamabandi for the year 1986-1987, also proves

that the predecessor of the plaintiff was recorded as a co-owner. The learned counsel representing the appellants admits that the plaintiffs are not recorded as tenants in any of the revenue records produced by them.

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

15. Dismissed.

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

May 23, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO