

RSA No.3135 of 2023 (O&M)

#1# 2024:PHHC:018164

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

RSA No.3135 of 2023 (O&M)

Kailash & Anr

.....Appellants

Versus

Baldev & Others

.....Respondents

Date of Decision: 09.01.2024

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vishal Yadav, Advocate for the appellants.

SUDEEPTI SHARMA, J

CM No.11228-C of 2023

Prayer is for condonation of 65 days delay in filing the present appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 65 days in filing the appeal is condoned.

Main case

Appellants-defendant Nos.6A & 6B have preferred this regular second appeal being aggrieved by the judgment 10.04.2023 passed by the learned Additional District Judge, Rewari whereby the appeal filed by them against the judgment and decree dated 10.09.2015 passed by the learned Civil Judge (Jr. Division), Rewari, decreeing the suit of the respondent No.1/

plaintiff has been dismissed.

Briefly noticed, the facts of the case are that respondent No.1/plaintiff had instituted a suit seeking relief of declaration to the effect that the plaintiff and proforma defendants were coming as tenants in possession of suit land comprised in Khewat No.98, Khatoni No.123, Rectangle No.78, Killa No.21/2 (3-6) 22 (8-0), Rect No.87, Killa No.3 Min garab (6014) total measuring 18 kanal situated within the revenue estate of Village Baasduda, Tehsil & District Rewari since previous 60 years on payment of rent revenue and cess as (Chakota Saal Tamam). Consequential relief was also sought to restrain the defendant from interfering into his possession or to dispossess him. Respondent No.1-plaintiff pleaded that he became owner of the land on the following grounds:

(a) That the suit land was lying Banjar and uncultivated and the predecessors-in-interest of the respondent No.1/plaintiff were given the suit land by the predecessors-in-interest of the appellants/defendants for cultivation on payment of rent revenue and cess for the time being chargeable as 'Chakota Saal Tamam' which comes within the definition of Favourable rent and further promised that the predecessor-in-interest and their successors including the respondent No.1/plaintiff will not be ejected from the suit property.

(b) That on the assurance given by the landlords/the predecessors-in-interest of the appellants-defendants, the predecessors of the respondent No.1/plaintiff brought the land under their cultivation after spending a huge amount and hard labor for making the suit land fit for cultivation and fertile.

(c) That the predecessors-in-interest of the respondent

No.1/plaintiff and after them the respondent No.1/plaintiff has been cultivating the suit land continuously and have not so far been ejected from the same as there was a promise never to eject the tenants.

(d) That since the time of inception of the tenancy of the predecessors-in-interest of the respondent No.1/plaintiff and till today the rates on which the land was given on cultivation have not increased.

(e) That there is a custom prevalent in the areas where the suit land is situated that the tenants like the respondent No.1/plaintiff has become the owners of the land under their cultivation.

(f) That the rates of the rent is similar from the inception of tenancy till today i.e Rs.1.80 Chakota Saal Tamam whereas the prices of the goods have enormously increased.

Having filed the suit on the said cause of action, respondent No.1/plaintiff also sought a decree for declaration that he had acquired rights under Sections 5 & 8 of the Punjab Tenancy Act and by virtue of Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for brevity “1952 Act”); with a consequential relief of permanent injunction to restrain the appellants/defendants from interfering into the possession of the respondent No.1/plaintiff or to dispossess them.

Upon notice, appellants-defendants appeared and filed joint written statement. In preliminary objections, it is *inter alia* stated that the suit of the plaintiff is not maintainable as he had no locus standi or cause of action to file the same. They denied the claim of the respondent No.1/plaintiff and proforma defendants and disputed that they were settled on the suit land as tenants at Will. The grounds on which the respondent

No.1/plaintiff claims to have acquired occupancy tenancy and ownership have been specifically denied. The long possession of respondent No.1/plaintiff was also denied besides submitting that the revenue entries are wrong. It was further denied that the landlord had ever made a promise that the predecessors-in-interest of the respondent No.1/plaintiff or the respondent No.1/plaintiff would never be ejected. Thus, denying the whole cause of action, it was pleaded that the suit should be dismissed.

Replication was filed and from the pleadings of parties, following issues were framed:

- “1. Whether the plaintiff is entitled to seek a decree of declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to seek a decree of permanent and mandatory injunction as prayed for?OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 4. Whether the plaintiff is estopped by his own act and conduct to file the present suit?OPD*
- 5. Whether the Civil Court has no jurisdiction to entertain and decide the present suit?OPD*
- 6. Whether the suit of the plaintiff is hopelessly time barred?OPD*
- 7. Whether the plaintiff has no cause of action for filing the suit?OPD*
- 8. Relief.”*

In order to prove their respective case, both the parties led their evidence and tendered oral as well as documentary evidence.

After having heard learned counsel for the parties, learned trial Court vide judgment and decree dated 10.09.2015 decreed the suit of the contesting respondent No.1/plaintiff while declaring the respondent No.1/plaintiff as occupancy tenant apart from restraining the defendants

from interfering into the possession of the plaintiff or disposing them from the suit land.

Being aggrieved, appellants-defendant Nos.6A & 6B filed an appeal, which was dismissed by the learned Appellate Court vide impugned judgment dated 10.04.2023, hence the present second appeal.

Learned counsel for the appellants submits that both the learned courts below have gravely erred in decreeing the suit by not correctly appreciating the evidence and material documents on record and arrived at a perverse finding, which is liable to be set aside. It is contended that the predecessors-in-interest of the plaintiff and proforma defendants were never inducted as tenants with intention that they would not be ejected nor was there any implied promise to that effect. Learned lower court has committed an error in holding that the plaintiff had acquired occupancy rights which transformed into proprietary rights by virtue of the provisions of the 1952 Act. Both the courts below have fallen into error in only relying upon the evidence led by the plaintiff, which is not worthy of acceptance being self contradictory and doubtful.

I have heard learned counsel for the appellants and after perusing the judgments of both the learned courts below, this Court concludes as under:

Learned trial Court while examining the statutory provisions dealing with the subject observed that Section 8 of the Act visualizes the existence of conditions other than those specified in Section 5 or 6 of the Act and its scope has been deliberately kept wide enough to embrace all cases where in view of special circumstances of the case, the courts may think it just and equitable to confer occupancy rights. It has rightly recorded that at the same time, it would be incorrect to give benefit of Section 8 in cases

which legitimately fall within the provisions of Sections 5 or 6 of the Act but have failed to qualify for occupancy rights in view of the provisions of those Sections. Based on the material evidence available before it, learned trial Court came to a definite finding and firm conclusion in para 14 to 16 of its judgment to the following effect:

“14. Further, as per Section 2(f) of Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952 hereinafter referred as to Act of 1952 hold that expression “occupancy tenant” includes two types of such tenants, namely (1) those who were recorded as such in the revenue records immediately before the Act came into force, and (2) those who after the commencement of the Act obtain a right of occupancy in respect of the land held by them in the manner stated therein. Appointed day for those who fall in the first category was the 15th June, 1952 and for those obtaining a right of occupancy after that day is the date on which such rights are obtained. Section 3 of the Vesting of Proprietary rights Act has the effect of extinguishing all rights, title and interest of the landlord on the appointed day and this extinguishment of rights takes effect in both the categories. The result, therefore, is that even if an occupancy right is obtained after the coming into force of the Vesting of Proprietary Rights Act, there is simultaneous extinguishment of that right and conversion of the same into ownership.

*15. Lastly, coming to the question of competence of this Court, it is observed that the controversy stands concluded after the judgment of Hon’ble Punjab & Haryana High Court in case titled **Shiv Charan Versus Financial Commissioner, Haryana and others 2004(4) RCR (Civil) 543** wherein full bench of Hon’ble High Court describing Section 77(3)(d) of the Act of 1887 has held that a civil suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2 (f) of the Vesting Act.*

16. Applying the above proposition of law, this Court is of the considered view that in the case in hand, the case of the plaintiff does not fall in Section 5 or 6 and he can only claim

Occupancy Rights under Section 8 of the Act of 1887. Perusal of record and the evidence shows that plaintiff has pleaded that the right has been generally and customarily and by the act of the proprietors has been conceded to other tenants, similarly circumstanced in the same village or in its neighborhood.”

The aforesaid view has been affirmed by the learned appellate Court.

Now, again before this Court also, those findings of facts are tried to be disputed by the appellants by submitting that the predecessors-in-interest of the plaintiff were never in cultivating possession of the suit land but no particular material and relevant record has been placed on record by them to substantiate the same.

This court is fully in agreement with the findings recorded by both the courts below that respondent No.1/plaintiff has established that his predecessors-in-interest were inducted as tenants with intention not to eject and there was implied promise to that effect.

As a sequel to the aforesaid discussion, no infirmity could be found with the findings recorded by both the learned courts below warranting any interference by this Court. No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by the Appellate Court.

No substantial question of law is involved in the present appeal warranting interference by this Court.

Dismissed.

Pending application(s), if any, also stand disposed of.

January 09, 2024

manoj

(Sudeepti Sharma)

Judge

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No