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

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RSA-2363-1993 (O & M)

Date of decision:19.02.2025

JITA & ORS.

...APPELLANTS

VS.

HAR SUKH & ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Manuj Chadha, Advocate &
Mr. Hari Pal, Advocate for the appellants.

Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate &
Mr. Jagnoor Singh, Advocate for the respondents.

SUVIR SEHGAL, J.

CM-4997-C-2024

1. For the reasons given in the application, it is allowed.
2. Legal representatives of deceased-appellant No.2 are ordered to be impleaded in place of the deceased, subject to all just exceptions.
3. Amended memo of parties is taken on record.

Main Case

4. Defendants are in second appeal before this Court assailing the judgment and decree passed by the first appellate court.



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5. Respondents/plaintiffs filed a suit for possession of land measuring 10 kanals 12 marlas situated in the revenue estate of village Andhop, Tehsil Hathin, District Faridabad. Their pleaded case is that the land was under cultivation, which Smt. Gopali, who inducted the defendants as tenants in possession. Smt. Gopali died about three years ago without leaving any successor and her tenancy rights in respect to the property came to an end. Claiming that the defendants were in unauthorized possession of the suit land, plaintiffs filed the suit. Upon being served, defendants filed a joint written statement raising various preliminary objections. A stand was taken that the defendants have become owners by way of adverse possession as they have been in continuous and hostile possession for more than 25 years. It was submitted that Smt. Gopali died in the year 1965 and the defendants are her heirs being her husband's nephews and they are entitled to succeed to the tenancy rights. Smt. Gopali left behind a daughter, who executed a Will in favour of the defendants authorizing them to take possession of the suit land. By way of an amendment of the written statement, which was allowed by the Trial Court vide order dated 22.01.1990, defendants took an additional plea that Smt. Gopali became the absolute owner of the suit property during her life time as she acquired occupancy right under Sections 5 and 8 of the Punjab Tenancy Act, 1887 (for short "1887 Act") read with Section 3 of the Punjab Occupancy Tenants, (Vesting of Proprietary Rights) Act, 1953 (for short "1953 Act"). It was stated that Smt. Gopali and her predecessor-in-interest had been in possession of the suit land for more than 80 years and as per prevailing

custom, Smt. Gopali acquired the occupancy rights being a tenant. Plaintiffs



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filed a replication to the amended written statement. On the basis of the pleadings of the parties, Trial Court framed issues. After contest, suit was dismissed by the Trial Court by judgment and decree dated 04.10.1991. Plaintiffs succeeded in the first appeal, which was accepted by the learned Additional District Judge, Faridabad vide judgment dated 21.09.1993 and a decree of possession of the suit land was passed in their favour. Defendants have filed the instant appeal in the above background.

6. Placing reliance upon **Akhtar and others Vs. Israil and another** **2012 (4) PLR 797**, the sole argument raised by counsel for the appellants is that the civil court could not have passed the decree for possession of the suit land after it was found that the defendants were tenants in possession of the land.

7. Counsel for the respondents has opposed the appeal and supported the impugned judgment and decree passed by the first appellate court.

8. I have heard counsel for the parties and considered their submission, besides examining the record with their able assistance.

9. An examination of the jamabandis, Ex.DA to Ex.DD shows that the plaintiffs were the owners of the suit land and its possession was with Smt. Gopali as a tenant *gair marusi* through the defendants, who were the sub-tenants under her. Appellants had set up a plea that they have become owners by way of adverse possession, but since they have failed to establish that their possession was open or hostile and to the knowledge of the plaintiffs, the plea taken by them is rejected. Their possession over the suit

land has been held to be permissible. Appellants have not been able to



establish that Smt. Gopali was recorded as an occupancy tenant prior to the commencement of the 1953 Act and her rights do not get converted into statutory ownership on the appointed date. The first appellate court found that Smt. Gopali continued to be a tenant-at-will and she nor her heirs could Will the tenancy rights in favour of the defendants. In **Chuhar Singh (Deceased) and others Vs. Jagat Singh and others 1986 PLJ 373**, a coordinate Bench of this Court has held that a tenant-at-will is not competent to make any Will of his tenancy rights in favour of another person. Moreso, when the tenant failed to establish himself to be the occupancy tenant or obtained any declaration to this effect.

10. First appellate court has returned a finding that the suit is within the prescribed period of limitation. It is evident from the death certificate, Ex.DJ, that Smt. Gopali died on 16.09.1964 and plaintiffs filed a suit for possession on 20.08.1986, that is, within a period of 12 years from the date of her death. Interpreting Article 65 of the Limitation Act, 1963, in **Sopanrao and another Vs. Syed Mehmood and others 2019 (4) PLR 614**, Supreme Court held that a suit for possession of immovable property or any interest therein based on title has to be filed within a period of 12 years from the date the possession of the land became adverse to the plaintiffs. Suit is therefore within limitation.

11. This Court will now consider the argument raised by counsel for the appellants, who has urged that the Court cannot pass a decree for possession. The maintainability of the suit for possession has been contested by the defendants and a specific issue was framed, but the defendants did not



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Court. This issue was decided against them by the Trial Court and they never filed any appeal or cross-objection challenging the finding. They are, therefore, estopped from raising this plea in second appeal. The judgment relied upon by the counsel for the appellants will not come to his aid. This Court does not find any infirmity or illegality in the judgments passed by the courts below, which are affirmed.

12. Appeal being devoid of merit, is dismissed, though with no order as to costs.

13. Pending application(s), if any, is/are disposed off.

19.02.2025

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No