



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

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Date of decision : 19.05.2025

1. RSA-4145-2013 (O&M)

Pushkar and others Appellants

versus

Ompal and others Respondents

2. RSA-4146-2013 (O&M)

Pushkar and others Appellants

versus

Ompal and others Respondents

3. RSA-4149-2013 (O&M)

Pushkar and others Appellants

versus

Ompal and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Akshay Kumar Goel, Advocate
for the appellants.

Mr. Ajay Kumar Gupta, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. These are bunch of appeals preferred by the defendant-land owners.
2. Plaintiffs filed suit seeking declaration to the effect that they being occupancy tenants have become owners by the dint of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.



Both the Courts below have decreed the suit filed by the plaintiffs holding them entitled to the decree of declaration.

3. Mr. Goel while assailing the findings recorded by the Courts below submits that the tenants failed to prove that they were in possession of land as 'occupancy tenants'. In terms of Section 9 of Punjab Tenancy Act, 1887, mere long possession as tenants does not vest right of occupancy in the tenant. He further submits that even though in the revenue record, it has been recorded in column No.9 that the plaintiffs are paying rent equivalent to land revenue i.e. Rs.25/-. However, the presumption attached to record of rights is rebutted by admission of plaintiffs. Reference is being made to testimony of PW1, where he admitted that at times they were paying rent of Rs.75/- and at times were paying rent of Rs.100/- to the defendants. He submits that so is the testimony of PW3 lambardar Badri Parsad. He further relies upon ratio of law laid down in ***Tara Chand vs. Bihari Lal and others***, reported as **2018(1) R.C.R. (Civil) 443**, which has been upheld by Supreme Court in SLP No.23018/2018.

4. *Per contra*, Mr. Gupta submits that Tara Chand's case is based upon ratio of law laid down in ***Jaleb Khan and others vs. Commissioner, Gurgaon Division, Gurgaon and others*** 2009(4) R.C.R. (Civil) 385. The same is not applicable to the present case. He submits that the ratio of law laid down in ***Mauj Khan and others vs. Deen Mohd. and another*** 2017(1) RCR (Civil) 700 would be applicable and the same is pending adjudication before Supreme Court in civil appeal No.001064 of 2017. Mr. Gupta further had made reference to Section 5 and 8 of 1953 Act to submit that the plaintiffs being in



possession as tenants on paying rent not more than the land revenue attained rights of occupancy tenants and by dint of 1953 Act became owners thereof. He further submits that this Court in second appeal, need not upset the pure findings of fact recorded by the Courts below, as the same is beyond the scope of second appeal.

5. Reference is made to ***Ram Chand Premi vs. Nawab Kaur 2004(2) R.C.R. (Civil) 237, Kulwant Singh vs. Phula Singh 2004(2) R.C.R. (Civil) 28, Manorama Thampuratti vs. C.K. Sujatha Thampuratti and others 2000 AIR (Supreme Court) 3400, Ratnam Chettiar and others vs. S.M. Kuppuswami Chettiar and others 1976 AIR (Supreme Court) 1 and Sadhu vs. Mst. Kishni 1980 AIR (Punjab and Haryana) 85.***

6. Mr. Gupta further relies upon order passed by this Court in ***Rattan Singh vs. Financial Commissioner, Haryana*** to submit that a landlord is entitled to claim rent upto 1/3 batai. Thus, wherever rent is less than 1/3 batai, the same has to be construed as nominal rent and thus, the same shall vest the tenant with occupancy rights.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. In the considered opinion of this Court, the fate of the present appeals hinges on the issue:-

(i) *Whether the plaintiffs proved themselves to be occupancy tenants or not?*

9. Before embarking upon the merits of the case, it will be apt to deal with the objection raised by Mr. Gupta regarding scope of second appeal.



Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as



such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules



26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

XXXX XXXX XXXX”

11. Thus, the second appeals before this Court are to be dealt with in accordance with Section 41 of Punjab Courts Act and not



Section 100 CPC. Yet the question of law is *sine qua non* to entertain second appeal. Trite it is that misreading of evidence breeds question of law.

12. In the present case, relying upon revenue record, the Courts below held the plaintiffs to be occupancy tenants. While doing so, the Courts below have totally ignored the testimony of PW1 and PW3, wherein they admitted that the tenants were paying rent more than land revenue. In ***Tara Chand's case (supra)***, this Court while dealing with the issue of vesting of occupancy right in tenancy observed as under:-

“13. A reading of Section 9 of 1887 Act would show that the right of occupancy tenant cannot be acquired by a tenant by mere lapse of time. Section 5(2) of the 1887 Act provides that if a tenant proves that he has been in continuous possession of the land for 30 years and paid no rent therefor beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be assumed that he has fulfilled the condition of occupancy tenant. However, for that the tenant is 8 of 10 to specifically plead and prove and meet with both the conditions prescribed under Section 5(2) of the 1887 Act.”

13. The Lower Appellate Court has heavily relied upon ratio of law laid down by this Court in ***Muni Ram and others vs. Phullia and Lahu, 1974 PLJ 369***, the ratio culled out in Muni Ram's case (*supra*) reads as under:-

“6. On a review of the various judgments to which counsel have referred during the course of their submissions (***Tota Ram v. Rana Bashisht Singh Chandra, 1952 L.L.T. 1; Devki Nandan and others v. Shiv Lal, 1958 L.L.T. 40; Achhar Singh and another v. Smt. Kartar Kaur and another, 1959 P.L.R. 231; Anant Ram and another v. Lakhbir Gupta, 1962 L.L.T. 43, and Raghbir Singh v. Beli Ram, 1967 P.L.R. (Delhi Section) 396***, the following propositions of law appear



to me to be firmly settled :-

(i) the intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement which came into existence at the time of the commencement of the tenancy;

(ii) mere length of possession does not entitle a tenant to acquire occupancy rights in the land in his possession as a tenant;

(iii) the intention behind the wide scope left by Section 8 of the Tenancy Act is :-

(a) not to restrict the tenant in any way from establishing his rights of occupancy; and

(b) to presuppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Sections 5 and 6 of the Tenancy Act;

(iv) in cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted;

(v) a strong presumption of the implied promise not to eject a tenant, and, therefore, of the existence of an occupancy tenancy in favour of such a tenant can be raised :-

(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effort was made by the landlord to enhance the rent; and

(b) where despite the existence of a stray entry which is inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant.”

14. On being repeatedly asked as to how the tenants acquired the right of occupancy tenant, Mr. Gupta relies upon Section 5 and 8.

The same 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 grand-father or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefor beyond the amount of 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 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 prove that he has continuously occupied land for thirty years and paid no rent therefor 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 any heir and relationship, by the usage of a religious community.



8. Establishment of right of occupancy on ground 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.”

15. Keeping in view the fact that the tenants admittedly were paying rent more than land revenue, their case does not fall within the ambit of Section 5(2). Reliance upon Section 8 also is of no help to the respondents. In terms of Section 8 as interpreted by this Court in ***Muni Ram’s case (supra)***, the tenant can plead and prove his occupancy rights beyond the scope of Section 5 and 6 of Tenancy Act provided there exist circumstance, which can lead to inference of any implied promise, not to eject tenant for ever. This Court held that a strong presumption of implied promise not to eject a tenant and therefore of the existence of occupancy tenancy in favour of tenant can be raised subject to fulfillment of following conditions:-

- (A) The tenancy has lasted for many years with no effort made by landlord to enhance the rent; and
- (B) There was no intention to raise the rent or to recover anything by the landlord from the tenant.

16. Testing the case of the tenants in the present appeal on the touchstone of the aforesaid conditions, this Court finds that the tenant cannot claim to have satisfied the said two conditions. Enhancement of rent and payment thereof is admitted by plaintiff while appearing as PW-1. Thus, reliance upon Section 8 also is misplaced.

17. In view thereof, this Court finds that the Courts below erred in holding tenants to be occupancy tenants and thus, entitled for decree of having become owners.



18. Findings recorded by the Courts below are hereby set aside.
Appeals i.e. RSA Nos. 4145 & 4146 are allowed and RSA No. 4149 of 2013 is disposed off.

19. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

20. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

19.05.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No