

RSA-2906-2018 (O&M) 2025-PHHC-032936



RSA-4383-2018 (O&M)

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision :03.02.2025

RSA-2906-2018(O&M)

Amarjeet Kaur

..... Appellant

Versus

Bir Singh &ors.

..... Respondents

RSA-4383-2018 (O&M)

Amarjeet Kaur

..... Appellant

Versus

Bir Singh &ors.

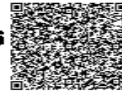
..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Deep Singh Saini, Advocate for
Mr. Krishan Singh, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

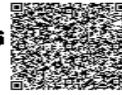
1 These two appeals at the behest of the plaintiff arise out of the same suit. Suit filed by the plaintiff was partly decreed. Both the plaintiff as well as defendant preferred cross appeals. The Lower Appellate Court dismissed both the appeals. Aggrieved plaintiff has filed present appeals. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and the respondents as defendants.



2 Plaintiff filed suit seeking decree of declaration to the effect that the entries in the revenue record reflecting deceased Bhajni as *gair marusi* tenant and now in the name of defendants are illegal, null and void and not binding on the rights of the plaintiff. Further prayer was made seeking decree of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit land. Further prayer was that in case, the defendants succeed in dispossessing the plaintiff from the suit land or otherwise, the defendants are found to be occupants of the suit land, the plaintiff prayed for recovery of possession.

3 Plaintiff claimed herself to be a purchaser of the suit land admeasuring 18 kanals 3 marlas as detailed out in the plaint. She claimed to have purchased the suit land vide registered sale deed for a valuable consideration of Rs.12,50,000/-. Plaintiff claimed that her vendors were held to be owners in possession of the suit land by the Court of A.C. Ist Grade, Palwal vide judgment and decree dated 21.08.1986. One Bhajni was inducted as a licensee by predecessor-in-interest of the plaintiff on the suit land. He died 20 years back and the licence stood revoked. However, his name continued in the column of cultivation in the record of rights. After Bhajni, defendants were recorded as occupants of the land without any basis. The plaintiff being owner in possession is entitled for the relief as claimed.

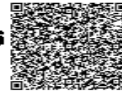
4 The suit was contested by the defendants who claimed to be in cultivating possession for more than 70 years since the time of their ancestors. Defendants denied title of the plaintiff and her predecessor-in-interest Basanti. Defendants claimed that Basanti along with Girraj



and Omwati filed suit for possession by way of redemption against the defendants. The suit was dismissed vide judgment and decree dated 15.04.1991 by the Court of Sub-Judge Ist Class, Palwal. Defendants are tenants and in possession of the suit land. Plaintiff has no concern, title or interest over the same. On the basis of the pleadings following issues were framed :-

- “1. Whether the plaintiff is owner in possession of the suit property as detailed in para no.1 of the plaint? OPP*
- 2. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 3. Whether the plaintiff is entitled for permanent injunction as prayed for on the grounds mentioned in the plaint? OPD*
- 4. Whether the suit of the plaintiff is barred by the provision of order 2 Rule 2 CPC? OPD*
- 5. Whether the suit of the plaintiff is barred by the principle of res-judicata? OPD*
- 6. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 7. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD*
- 8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 9. Whether the suit of the plaintiff is barred by limitation? OPD*
- 10. Whether the plaintiff has come to the court with clean hands and has suppressed true and material facts from the court? OPD*
- 11. Relief.”*

5 While deciding issue No.1 to 5 learned Court of the first instance after appreciating entire revenue record from the year 1940-1941 till 2007-2008, came to the conclusion that Bhajni remained in cultivating possession as *gair marusi* since year 1967-68 till 1992-1993. Thereafter his legal heirs came into possession. Even though column No.9 with respect to



payment of rent is blank. Civil Judge relied upon judgment and decree dated 15.04.1991 wherein the issue of the nature of possession of defendants was adjudicated by the Court. Repelling the contention of the predecessor-in-interest of the plaintiff regarding Bhajni being mortgagee, the Court held that Bhajni son of Mawasi was *gair marusi* tenant. Tenancy rights are inheritable and hence defendants are still *gair marusi* tenants over the suit land. Relying upon the aforesaid findings recorded by the Courts in the earlier suit, Court of the first instance held that the same shall operate as *res-judicata* in the present suit as well holding that the defendants continued to be in possession as tenants Court declined the relief of injunction. Partly decreeing a suit *qua* declaration with respect to ownership, Trial Court held that the plaintiff is only entitled to evict defendants by following due course of law. Court of the First instance thus, decreed the suit filed by the plaintiff to the extent that the plaintiff was declared as owner of the suit land. However the other two reliefs were declined.

6 The aforesaid findings recorded by the Courts below have been affirmed by the Lower Appellate Court.

7 Learned counsel for the plaintiff has not been able to demonstrate as to how the findings recorded by the Courts below holding defendants to be *gair marusi* tenants can be held to be bad especially in the light of the fact that the findings recorded in the earlier *lis* have attained finality.

8 Pure finding of facts have been recorded by the Courts below after appreciation of the evidence on record. Defendants have been found to

be in possession as tenants. Liberty has been granted to the plaintiff to seek eviction of the tenants-defendants in accordance with law.

9 In view thereof, this Court does not find any reason to interfere in the instant appeals and the same are ordered to be dismissed.

10 Photocopy of this order be placed on the connected file.

03.02.2025

Pooja Sharma-I

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No