

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-4172-2018****Date of Decision: 24.02.2025****SATBIR SINGH AND OTHERS**

... APPELLANTS

Vs.

HOSHIAR SINGH (SINCE DECEASED) THROUGH HIS LRS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sushil Jain, Advocate,
for the appellants.

DEEPAK GUPTA, J.

Suit for declaration filed by the plaintiffs-Man Singh and others (*now respondents No.1 to 22*) regarding property in dispute was dismissed by the trial Court on 05.04.2014. The appeal filed by them was partly allowed by the First Appellate Court, whereby though the declaration sought by them was declined but the defendants were restrained from dispossessing them from the suit property except in due course of law vide judgment dated 16.02.2018.

2. It is against the aforesaid judgment and decree of the First Appellate Court that defendants No.2 to 4 of the case have approached this Court by way of the present Regular Second Appeal. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3.1 According to the plaintiffs, suit land had been entrusted to plaintiff-Man Singh and his forefathers by the ancestors of the defendants namely, Bholar and Bhagta Singh about 57 years prior to filing of the suit (*suit was filed in December 2007*). There was an understanding that plaintiffs/their ancestors would not be evicted therefrom. Plaintiffs claimed that being in possession for the last more than 50 years, they had become full-fledged owners by acquiring the occupancy rights under Sections 5, 6 & 8 of the Punjab Tenancy Act, 1887 to be read with Section 3 of the Punjab Tenancy (Vesting of

Proprietary Rights) Act, 1952. It was further alleged that name of defendant No.1-Gram Panchayat (*now respondent No.23*) was wrongly recorded to be owner of the suit land in the revenue record though it does not have any right, title or interest. It was further alleged that defendants No.2 to 4 (*Appellants herein*), who were successors-in-interest of proprietors/owners i.e. Bholar and Bhagta Singh, were adamant to dispossess the plaintiffs from the suit land.

3.2 Contesting the suit, Gram Panchayat claimed that suit land was part of *Shamlat deh* and vested in it by virtue of Section 4 of the Punjab Village Common Land (Regulation) Act, 1961 and there was no question of the said Gram Panchayat entering into any kind of agreement with plaintiffs/their predecessors 57 years prior to filing of the suit. They denied plaintiffs/their ancestors to have ever cultivated the suit land. Defendants No.2 to 4 claimed to be in possession of the suit land since the time of their forefathers and denied that plaintiffs/their ancestors were ever inducted as tenants. They prayed for dismissal of the suit.

3.3 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit.

4. In the appeal filed by the plaintiffs, it was found by the First Appellate Court that earlier Bholar and Bhagta Singh, predecessors-in-interest of the appellants, were recorded to be *gair maurusi* in the column of cultivation but ever since 1959 till date, it is plaintiff-Man Singh, who was recorded to be *gair maurusi* in settled possession of the suit property. The Appellate Court referred to the Jamabandis/revenue record Ex.P1 to P12 in this regard. First Appellate Court further referred to the testimony of DW1-Satbir Singh, the own witness examined by the defendants, who admitted the plaintiffs to be in possession of the suit land for the last 50-60 years. DW2-Suraj Bhan testified that Gram Panchayat was not the owner and had never made any endeavour to evict plaintiff from suit property. DW3-Dalel Singh admitted the possession of the plaintiff, ever since the time of his birth.

5. Based upon the entries in the revenue record and the oral evidence, the First Appellate Court found the plaintiffs to be in possession of the suit property at least since 1959, but their possession was found to be as sub-tenant. It was further found that none of the defendants were in possession of the suit property. There was no evidence that plaintiffs had ever paid any rent to the Gram Panchayat. Based upon this factual possession, particularly to the effect that plaintiffs were sub-tenants and not the tenants, the Appellate Court upheld the finding of the trial Court, declining the declaration sought by them, but decreed the suit for injunction by restraining the defendants from dispossessing the plaintiffs from the suit property except in due course of law.

6. The sole contention raised before this Court by Id. counsel for the appellants is that evidence has not been property appreciated. However, it is fairly conceded by Id. counsel that appellants-defendants No.2 to 4 are not in possession of the suit property and as per the revenue record, as discussed by the first appellate Court, it is the plaintiffs, who are in possession of the property in dispute.

7. In the face of the aforesaid admission, this Court does not find any scope to interfere in the finding recorded by the First Appellate Court to the effect that plaintiffs being in settled possession of the suit land, cannot be evicted except in due course of law. As such, finding no merit in the present appeal, the same is hereby dismissed.

24.02.2025

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No