

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

RSA-1788-1996 (O&M)

Reserved on :-19.02.2026

Date of Pronouncement:-25.02.2026

Uploaded on:-26.02.2026

Bhura @ Bhuru (Deceased) Through LRs and Others

... Appellants

Versus

Yamin and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

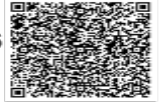
Mr. Rajinder Goel, Advocate with
Mr. Navjyot Singh, Advocate and
Ms. Anari Parnami, Advocate
for the appellants.

None for respondents.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as the “RSA”) has been instituted by the appellant–defendant assailing the concurrent judgments and decrees rendered by the learned Courts below, whereby the suit instituted by the respondent–plaintiff seeking possession by way of pre-emption came to be decreed.

2. Briefly stated, the respondents–plaintiffs instituted a suit for possession by way of pre-emption in respect of the suit land, the complete particulars whereof stand delineated in paragraph No. 2 of the plaint. It was pleaded that defendant No. 4 was a co-sharer in the suit property to the

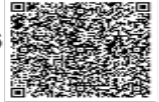


extent of one-half share in land measuring 60 kanals and 5 marlas. The plaintiff asserted that he was a tenant as Gair Marusi prior to the impugned sale and continued to remain in cultivating possession as such on the date of sale in respect of agricultural land measuring 26 kanals and 18 marlas, as fully described in paragraph No. 2 of the plaint.

2.1. It was alleged that defendant No. 5, acting as General Power of Attorney holder of defendant No. 4, without notice to or knowledge of the plaintiff, executed a registered sale deed dated 17.07.1990 in favour of defendants No. 1 to 3 for a sale consideration of ₹1,00,000/- in respect of the land detailed in paragraph No. 1 of the plaint. It was further averred that Smt. Tulsi Bai was a co-owner to the extent of one-half share, which corresponded to 13 kanals and 9 marlas. On the strength of his status as a tenant, the plaintiff claimed a preferential and superior right to pre-empt the sale in question. Despite repeated requests, the defendants allegedly failed to have the sale deed executed in favour of the plaintiff, thereby necessitating the institution of the present suit.

3. Upon service of summons, the defendants entered appearance and contested the suit by raising preliminary objections regarding locus standi, maintainability, and the alleged non-compliance with the statutory requirement of deposit of one-fifth of the pre-emption amount. On merits, the defendants denied that the plaintiff was a tenant or in possession of the suit property and categorically refuted his entitlement to claim any right of pre-emption.

4. In due course, the plaintiff filed a replication traversing the pleas and preliminary objections advanced in the written statement,



specifically denying the allegations contained therein and, in turn, reaffirming and reiterating the material averments and claims set forth in the plaint. Upon completion of the pleadings, the learned trial Court, with a view to crystallizing the real points of controversy between the parties and to facilitate a structured and legally coherent adjudication of the *lis*, deemed it appropriate to frame the following issues for determination:—

- 1- Whether the plaintiff has got superior right pre-emption as tenant in respect of the suit land?OPP
 - 2- Whether the plaintiff is tenant over land the suit land?OPD
 - 3- Whether the plaintiff has no locus-standi to file the present suit? OPD
 - 4- Whether the suit is not maintainable in the present form?OPD
 - 5- Whether 1/5th pre-emption money has not been deposited legally and properly?OPD
 - 6- Whether the plaintiff has no right to file this suit? OPD.
 - 7- Whether the suit is bad for partial pre-emption? OPD.
 - 8- Whether the suit is liable to be dismissed for non-joinder of necessary parties?OPD
 - 9- Relief.
5. Upon the settlement of issues, both parties were afforded full and adequate opportunity to lead their respective oral as well as documentary evidence in support of their pleadings. After a comprehensive appraisal of the entire material available on record, the learned Additional Civil Judge (Sub-Judge), Ferozpur Jhirka, decreed the suit, subject to the condition that the plaintiff shall deposit the balance sale consideration of ₹44,462.80, after deducting ₹8,892.60 already deposited towards one-fifth of the pre-emption amount, together with stamp charges of ₹5,557.85 and



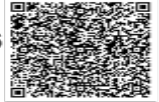
registration fee of ₹135/—, aggregating to a total sum of ₹41,263.05, within a period of one month from the date of the decree. It was further directed that in the event of failure to deposit the said amount within the stipulated period, the suit shall be deemed to have been dismissed.

5.1. The appeal preferred by the appellant-defendant against the said judgment and decree was dismissed by the learned First Appellate Court vide judgment and decree dated 04.05.1996, thereby affirming the findings recorded by the trial Court. Aggrieved by the concurrent judgments and decrees passed by both the Courts below, the appellant-defendant has approached this Court by way of the present RSA.

5.2. Upon being satisfied that the appeal raised arguable and substantial questions warranting judicial examination, the same was duly admitted for regular hearing and notice was issued to the respondents. Respondents No. 2 and 3, despite service, were proceeded against *ex parte* vide order dated 11.09.1996. Respondent No. 1, though initially represented by Mr. Adish Gupta, Advocate, subsequently elected not to contest the proceedings and remained absent at the stage of final arguments. In these circumstances, the appeal was heard and considered on the basis of the submissions advanced by learned counsel appearing for the appellants.

5.3. For the purpose of comprehensive, informed, and effective adjudication of the controversy, the entire original record of the learned Courts below was requisitioned and has been carefully perused.

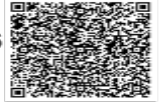
5.4. I have heard learned counsel for the appellants at length and have accorded anxious and thoughtful consideration to the submissions



advanced, in the backdrop of the pleadings, the evidence adduced on record, and the findings returned by the learned Courts below.

6. Learned counsel for the appellant has vehemently contended that the learned Courts below have failed to properly appreciate the revenue record produced by the respondent-plaintiff. It is contended that the respondent-plaintiff is nowhere recorded therein as a tenant over the suit land and that there is no entry evidencing payment of rent. Rather, his status in the revenue record is described merely as “Gair Marusi.” It is submitted that the Courts below have erroneously concluded that a “Gair Marusi” is to be treated as a tenant by placing reliance upon the judgment of this Court in ***Kanshi Ram and Others vs. Rawat Singh and Others, 1972 PLJ 580***, wherein certain observations were made regarding the status of a Gair Marusi cultivator.

7. However, learned counsel submits that the ratio of the aforesaid judgment has been misapplied, inasmuch as it is a settled proposition of law that, in order to establish the relationship of landlord and tenant, payment of rent is a sine qua non. In this regard, reliance has been placed upon the authoritative pronouncement of the Hon’ble Supreme Court in ***Natha Singh vs. Financial Commissioner, Taxation, Punjab, 1976 PLJ 293***, wherein it was held that the existence of tenancy must be established through cogent evidence, including proof of payment of rent, and that mere description in revenue entries, absent proof of essential ingredients of tenancy, would not ipso facto confer the legal status of a tenant.

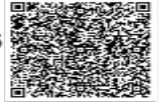


7.1. On the strength of the aforesaid precedents, it is contended that the findings recorded by the Courts below suffer from misreading of evidence and misapplication of the law governing pre-emption based on tenancy rights and are, therefore, liable to be set aside.

8. Having accorded thoughtful consideration to the submissions advanced by the learned counsel for the appellants and upon an exhaustive and meticulous perusal of the entire record, this Court proceeds to examine the controversy in its correct legal perspective.

9. A careful scrutiny of the Jamabandi entries, particularly Ex.P3 for the year 1986–87, reveals that the status of Tasheen has been recorded as “Gair Marusi,” while the 10th column, which is specifically designated for recording particulars of rent, remains conspicuously blank. Thus, the revenue record, on its plain reading, does not disclose any material indicative of payment of rent by the respondent-plaintiff to the landowner.

10. In this context, the authoritative pronouncement of the Hon’ble Supreme Court in **Natha Singh vs. Financial Commissioner, Taxation, Punjab** (supra) assumes determinative significance, wherein it has been unequivocally held that the existence of a valid relationship of landlord and tenant must be substantiated by cogent evidence, and that proof of payment of rent constitutes an essential and indispensable ingredient of tenancy. The mere description of a person as “Gair Marusi” in the revenue record, absent evidence of rent or other essential attributes of tenancy, does not ipso facto establish the legal status of a tenant in the eye of law, relevant extract is as under:-

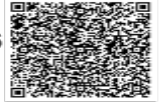


“In the absence of payment of or in the absence of material to show that there was a contract between appellant No.1 and appellants No.2 and 3 absolving the later of the liability to pay rent, it is difficulty to uphold the claim of appellants No.2 and 3 as they were tenants of appellant No.1”.

11. This Court, in ***Tarlok Singh vs. Harnam Singh and another 1974 PLJ 396***, has authoritatively expounded that for determining whether a person holds the status of a tenant over agricultural land, the entries recorded in the column pertaining to cultivation must necessarily be read in conjunction with those contained in the column relating to rent. It was categorically observed that neither of the two columns can be construed in isolation, and that a harmonious and conjoint reading thereof alone would reveal the true legal character of possession.

12. Conversely, the reliance placed by the Courts below upon ***Kanshi Ram and Others vs. Rawat Singh and Others (supura)*** does not, upon a closer and more circumspect analysis, advance the case of the respondent-plaintiff. In the said decision, this Court held that the expression “Mujara Gair Marusi” is ordinarily to be accorded its plain and natural meaning, unless the entries in the column of rent are demonstrably inconsistent with the description in the column of cultivation. Thus, the determinative factor remains the consistency and corroborative value of the rent column.

13. In the present case, however, a scrutiny of the Jamabandi entries Ex.P3 and Ex.P4 unmistakably reveals that the column pertaining to rent is entirely blank and does not reflect payment of any rent whatsoever.

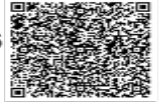


The absence of any such entry decisively militates against the existence of a landlord-tenant relationship. The respondent-plaintiff is merely recorded as “Gair Marusi” in possession, without any accompanying recital of rent, thereby negating the essential attributes of tenancy.

14. It is by now well-settled that the mere description of a person as “Gair Marusi” does not, in and of itself, confer the legal status of a tenant. This proposition stands reaffirmed by this Court in **Ram Kishan and Others vs. Jagdish and Others, Neutral Citation No.:2018: PHHC:02139**, wherein it was emphatically held that in the absence of proof of rent or other indicia establishing tenancy, a person recorded as “Gair Marusi” cannot be elevated to the status of a tenant in the eyes of law, relevant extract is as under:-

“The plaintiffs in the jamabandi for the year 1963-64 are recorded in the cultivation column as Gair Marusi. The literal meaning of Gair Marusi is known as non-occupancy. In the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT. Thereafter as per jamabandi for the year 1968-69 in the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT which continues up to the year 2003-2004. The literal meaning of words BILLA LAGAN BAWAJAH DARINA KASHT is that the persons are proclaiming to be owners by reason of being in the cultivating possession since long.

As noticed earlier, the meaning of word Gair Marusi is non occupancy. In view of these entries, the plaintiffs are not even proved to be tenant on the land. The word Gair Marusi itself does not imply that the person in occupation is a tenant. For arriving at conclusion whether a person is tenant or not, the entry in the column of rent has to be carefully read in conjunction with the entry in cultivation column. In the



present case, the entry in the rent column does not show that the plaintiffs were in possession as a tenant under the land owners.

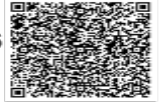
*This Court has already considered the word Gair Marusi and has held that a person, who is recorded as Gair Marusi, can never claim rights of occupancy tenant. Reference in this regard can be made to the judgment passed by this Court on 26.10.2017 in **RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others)**. This Court has in turn relied upon a judgment passed by the learned Single Judge of this Court in **Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2010 (1) PLR 111**.*

The plaintiffs are claiming the right of occupancy under Section 5(2) of the 1887 Act. Section 5 of the 1887 Act is extracted 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 grandfather or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefore beyond the amount of the 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 ceased to be land-owner continuously occupied the land; or

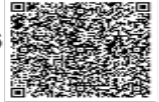
(c) who in a village or estate in which he settled along with or was settled by the founder thereof as a cultivator therein, occupied land on the twenty-first day of October, 1868, and has continuously occupied the land since that date; or



(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 the class specified in the 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 proves that he has continuously occupied land for thirty years and paid no rent therefore 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 had 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 an heir and relationship, by the usage of a religious community.” A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act. Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly construed. In the present case, the plaintiffs are not even proved



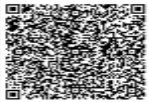
to be tenant. Hence, they are not entitled to declaration as prayed for. ”

A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act.

Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly construed.”

15. In view of the foregoing discussion and the authoritative exposition of law governing the evidentiary value of revenue entries, this Court is constrained to hold that both the Courts below have gravely erred in construing the Jamabandi entries so as to confer upon the respondent-plaintiff the status of a tenant and, on that erroneous premise, to uphold his alleged right of pre-emption. The findings so recorded suffer from patent misinterpretation of the documentary record and misapplication of settled legal principles, and are thus rendered legally unsustainable. Consequently, the impugned judgments and decrees passed by the learned Courts below are hereby set aside. The present appeal is accordingly **allowed**, and the suit instituted by the respondent-plaintiff stands dismissed.

16. Consequent upon the definitive adjudication of the principal *lis* and its culmination by this judgment, all ancillary or pending miscellaneous application(s), if any, arising out of or connected with the



present proceedings, shall stand disposed of by necessary implication. In view of the conclusions herein recorded, no separate or independent orders are warranted in respect thereof, the same having been rendered wholly infructuous and academic.

25.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No