



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

RSA No. 3665 of 2000 (O&M)

Reserved On : 23.02.2026

Pronounced On : 27.02.2026

Uploaded On :

Mishri (since deceased) through Lrs
Versus

...Appellant

Dhan Singh (since deceased) through Lrs

...Respondent

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Navmohit Singh, Advocate
for LR's of the appellant.

Mr. Sukhandeep Singh, Advocate and
Mr. Ram Lal Yadav, Advocate
for LR's of the respondent.

Amarinder Singh Grewal, J. (Oral)

1. The present Regular Second Appeal has been preferred by the appellant-defendant against the judgment and decree dated 03.03.1998 passed by the learned Civil Judge (Senior Division), Palwal, whereby the suit of the respondent-plaintiff for declaration and possession was decreed, and against the judgment and decree dated 08.09.2000 passed by the learned Additional District Judge, Faridabad, dismissing the appeal and affirming the findings recorded by the trial Court.

2. Briefly stated, facts of the case are that respondent-plaintiff Dhan Singh had filed the suit for declaration and possession of suit property before the Court of Additional Civil Judge (Sr. Divn.), Palwal in which it was submitted that he had purchased the suit land measuring 4 kanals 17 marlas from its previous owners, namely Dharambir etc., vide registered sale



deed dated 28.12.1989. Mutation No. 692 was sanctioned in his favour on 13.01.1990. It was pleaded that the appellant-defendant had no right, title or interest in the suit land, neither he was ever inducted as a tenant nor he paid any rent regarding the suit land. However, wrong entries in the revenue record exists in favour of the appellant-defendant, which cast clouds on the title of the respondent-plaintiff. The respondent-plaintiff asked the appellant-defendant several times to get the revenue record corrected and to get appellant-defendant's name deleted from the column of cultivation but the appellant-defendant refused to do so.

3. It was further pleaded that the appellant-defendant had earlier filed a suit claiming occupancy rights before the Assistant Collector Ist Grade, Palwal in respect of Killa No. 10 and 10/2/1, which was dismissed on 30.03.1994. As the appellant-defendant refused to acknowledge the ownership of the respondent-plaintiff, the respondent-plaintiff had sought decree of declaration that the appellant-defendant had no right, title or interest on the same and that entries in the revenue record are liable to be corrected accordingly.

4. Upon notice of the suit, defendants appeared and contested the claim by filing a written statement and took some preliminary objections. He had submitted that he had been in possession of the suit land as a *Gair Marusi* tenant under the previous owners Dharambir etc. for the last 50 years and that a relationship of landlord and tenant existed between him and the previous owners. However, the appellant-defendant denied the title of the respondent-plaintiff for want of knowledge. In the end, the appellant-defendant had prayed for dismissal of the suit of the respondent-plaintiff.



5. The respondent-plaintiff had filed replication controverting the pleas taken in the written statement whereas reiterating the averments in the plaint.

6. From the pleadings of the parties, following issues were framed :

- (1) Whether the plaintiff is owner in possession of the suit land? OPP.
- (2) Whether the revenue entries in Jamabandi for the year 1987-88 are illegal and not binding on the rights of the plaintiff? OPP
- (3) In case, the possession of the plaintiff is not proved, in that event the plaintiff is entitled to recover the possession? OPP.
- (4) Whether the plaintiff has no locus-standi to file the suit? OPD.
- (5) Whether the suit is not maintainable? OPD.
- (6) Whether the suit is barred by the principle of resjudicata? OPD.
- (7) Whether the defendant is tenant over the suit land under its owner, if so, to what effect? OPD.
- (8) Whether the plaintiff is estopped by his act and conduct from filing the suit? OPD.
- (9) Relief.

7. In support of his case, the respondent-plaintiff examined Sh. Dharambir as PW1, Sh. Sarupa as PW2 and Sh. Dhan Singh(plaintiff) as PW3 and after producing certain documents, the respondent-plaintiff closed his evidence. On the other hand, to rebut the evidence of the respondent-plaintiff, defendant examined himself as DW1 and further examined Sh. Nand Ram as DW2 and after producing certain documents, he closed his evidence. However, no evidence in rebuttal was adduced by the respondent-plaintiff.



8. After hearing learned counsel for the parties and on appreciation of the pleadings and evidence on record, the learned trial Court of Addl. Civil Judge (Sr. Divn.), Palwal, vide judgment and decree dated 03.03.1998, decreed the suit of the respondent-plaintiff in his favour.

9. Feeling aggrieved by the said judgment and decree dated 03.03.1998, the appellant-defendant filed an appeal in the Court of Additional District Judge, Faridabad, who, vide judgment and decree dated 08.09.2000 dismissed the same upholding the judgment and decree passed by the learned trial Court.

10. Still dissatisfied, the defendant through his legal heirs has approached this Court by way of filing the present regular second appeal under Section 100 CPC praying for setting-aside the concurrent judgment and decree passed by the Courts below and dismissal of the suit filed by the respondent-plaintiff.

11. Learned counsel for the appellant-defendant submits that the judgments passed by the trial Court as well as Appellate Court are based on conjectures and surmises as the learned trial Court has failed to appreciate the evidence led before it by the appellant-defendant that in fact, appellant-defendant is in cultivation possession of the suit property for the last more than 50 years as *Gair Marussi* tenant. It is further contended that the courts below had admitted the possession of the appellant-defendant over the suit property but had wrongly held that the appellant was not tenant under Dharambir Singh etc. (previous owners). In fact, there exists relationship of landlord and tenant in between the appellant and Dharambir etc. It is further submitted that even the revenue record supported the submissions of the



appellant-defendant, which clearly establishes the fact that the appellant-defendant is in lawful possession of the suit property as tenant. Thus, the learned trial Court had totally mis-interpreted the revenue record by holding that the possession of the appellant-defendant is only of *Gair Marusi* and not that of tenant. Prayer was made that the findings so recorded by the courts below be set-aside and the suit of the plaintiff-respondent be dismissed.

12. To the contrary, learned counsel for the respondent-plaintiff submits that the respondent-plaintiff had purchased the suit property from his previous owner, namely, Dharambir etc. vide registered sale deed dated 28.12.1989 and the learned courts after appreciating the evidence had rightly concluded that the respondent-plaintiff is lawful owner of the suit property and as such he is entitled for possession of the suit property. Thus, prayer was made that since the appeal is devoid of merit as such, the same deserves to be dismissed.

13. I have heard learned counsel for the parties besides going through the record.

14. Record would reveal that respondent-plaintiff Dhan Singh had purchased the suit property from its previous owners, namely, Dharambir etc. vide registered sale deed dated 28.12.1989 (Ex. P1) on record, which was proved by the respondent-plaintiff before the learned trial Court in accordance with law. Even the respondent-plaintiff got examined Dharambir, one of owner of the suit property as PW1 and he also proved the sale deed Ex. P1 on record. Further, on the basis of the said sale deed dated 28.12.1989, mutation No. 692 was sanctioned on 13.01.1990, the certified copy of which is Ex. P6 on record, which was got proved by the respondent-



plaintiff before the learned trial Court.

15. Despite the strenuous arguments raised by learned counsel for the appellant–defendant that he is in established possession of the suit property as a tenant, having allegedly taken the same on tenancy from its previous owner, Dharambir and others, and despite drawing the attention of this Court to the revenue record, this Court finds no merit in the said contention.

16. A perusal of the revenue record placed on record by the respondent–plaintiff, namely, jamabandi for the year 1987–88 (Ex. P3), jamabandi for the year 1992–93 (Ex. P4), jamabandi for the year 1967–68 (Ex. P5), and copies of khasra girdawari for the period w.e.f. October 1993 to May 1994 (Ex. P7), reveals that the appellant–defendant has merely been recorded to be in possession of the suit property. Significantly, there is no entry in the aforesaid revenue record indicating that the appellant–defendant was inducted as a tenant under the previous owner, namely, Dharambir and others.

17. In the absence of any such specific entry reflecting tenancy, the plea of the appellant–defendant that he was occupying the suit property in the capacity of a tenant under the previous owner remains unsubstantiated and unsupported by the documentary evidence available on record.

18. It is an admitted position on record that the appellant–defendant had earlier instituted Civil Suit No. 290/90 titled *Mishri Vs. Dhan Singh*, which was decided on 09.02.1994. The certified copies of the judgment and decree passed therein have been exhibited as Ex. D1 and Ex. D2. The said suit was filed by the appellant–defendant seeking a decree for permanent



injunction restraining the present respondent–plaintiff from interfering in his possession over the suit property. In the aforesaid proceedings, the appellant–defendant had set up a plea that he was a tenant over the suit land under the previous owner.

19. However, a perusal of the judgment and decree Ex. D1 and Ex. D2 reveals that the Court, in the earlier suit, only returned a finding with regard to possession and held the appellant–defendant to be in possession of the suit land at the relevant time. Consequently, the present respondent–plaintiff was restrained from interfering in the possession of the appellant–defendant except in due course of law. No adjudication with respect to title was made therein.

20. No finding was recorded in the earlier suit by the then learned Civil Judge to the effect that the possession of the appellant–defendant over the suit property was in the capacity of a tenant. The decree therein was confined only to protection of possession and did not determine the nature or character of such possession.

21. A perusal of the copy of jamabandi for the year 1963–1964 shows that the suit land was recorded to be in possession of its previous owner. Thereafter, in the jamabandi for the year 1967–1968 (Ex. P5), the present appellant–defendant was recorded in possession of the suit land as *Gair Marusi*. Similar entries also appear in the jamabandi for the year 1992–1993 (Ex. P4). Further, in jamabandi Ex. P5 for the year 1967–1968, column No. 9 records the possession of the appellant as “*Bila Lagan Bawajeh Purani Kast*”.



22. Simply, if the possession of the appellant-defendant has been held to be as *Gair Marusi* regarding suit property, it cannot be termed that the possession of the appellant-defendant over the suit property was that of a tenant. Rather, the learned courts below had rightly observed that in case the name of person is recorded in the column of *Gair Marousi*, that person cannot be held to be tenant because bare entries in cultivation column of *Gair Marousi* does not establish relationship of landlord and tenant.

23. Moreover, entries in the jamabandi in Column No. 9, nowhere show that any rent was ever being paid by the appellant-defendant to its previous owners, namely, Dharambir etc. Further, record would reveal that even the appellant-defendant had sought right of occupancy tenant by filing case No. 25/DRO titled as *Mishri Vs. Ramphal etc.* i.e. Ex. D-9 before the Assistant Collector Ist Grade, Palwal. On appreciation of the evidence, the learned Assistant Collector Ist Grade, Palwal passed the order dated 30.03.1994 thereby declining the plea of the appellant-defendant to seek the right of occupancy. In that case, the present appellant-defendant did not claim any right of occupancy tenant regarding the suit land. Thus, the entire evidence led by the parties leads to one conclusion that the possession of the appellant-defendant over the suit property was only as “*Bila Lagan Bawajeh Purani Kast*” i.e. *Gair Marusi* and not that of tenant. Rather, this Court is of the view that in case, the present appellant-defendant was tenant under the previous owners, namely, Dharambir etc. who further had sold the suit property to the respondent-plaintiff, the heavy onus was upon the appellant-defendant to produce some documentary evidence, which could have established that the appellant-defendant was tenant under the previous



owners but neither lease deed nor nay rent receipt was produced before the learned trial Court. Thus, in the absence of above documents, the possession of the appellant-defendant over the suit property has to be held as *Gair Marousi* i.e. illegal and the appellant-defendant has miserably failed to prove that there exists any relationship of landlord and tenant in between him and previous owners, namely, Dharambir etc.

24. No ground is made out for any interference in the judgment and decree of the learned Appellate Court.

25. In view of the judgments passed by the Hon'ble Supreme Court in *Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157*, *Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71* and *Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others (2023) SCC Online SC 875*, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, 1918.

26. Accordingly, the present appeal is dismissed.

27. The judgment and decree dated 08.09.2000 passed by the learned Additional District Judge, Faridabad is hereby affirmed.

28. Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

February 27, 2026
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(AMARINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No