



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

(117)

RSA-4120-2025 (O&M)
Date of Decision:-**03.02.2026**

MOOL CHAND (SINCE DECEASED) THROUGH HIS LRS AND
OTHERS

... Appellants

Versus

BISHAN DASS AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Kunal Bharti, Advocate
for the appellants.

VIRINDER AGGARWAL, J. (Oral)

1. Through the present Regular Second Appeal (for short “RSA”), the appellant-plaintiff has approached this Court seeking to set aside the judgment and decree dated 08.09.2025 rendered by the learned Additional District Judge, Rewari, whereby the judgment and decree dated 02.02.2022 passed by the learned Civil Judge (Senior Division), Rewai was affirmed. The trial Court had dismissed the suit instituted by the appellants–plaintiffs seeking decree for declaration and permanent injunction. The appellants has questioned the concurrent findings of the Courts below on the ground that the same are manifestly erroneous, legally untenable, and unsupported by the evidence on record.



2. In the majestic sweep of the factual canvas presented in the plaint, the plaintiff's case emerges with crystalline clarity, as set out hereunder:-

“The subject land, situated within the revenue estate of Village Bharawas, Rewari, was originally allotted to the defendants' predecessor, Jassu Ram, and subsequently devolved upon the defendants via mutation No. 503 in 1954. Following consolidation, the estate was re-particularized as Khewat No. 423, comprising 17 Kanals 9 Marlas. The plaintiffs' predecessor, Umrao Singh, held the land as a tenant (gair maurusi) since 1956, a status inherited by the plaintiffs who maintain uninterrupted, open, and cultivating possession. By agreement, the rent was pegged to the land revenue in perpetuity, with an express covenant against ejectment. Having reclaimed the once-uncultivable terrain through significant personal investment, the plaintiffs assert their status as permanent tenants, the defendants having never exercised physical possession.”

3. The plaintiffs assert proprietary title over the suit land by operation of The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, predicated on the following grounds:

- ➔ **Fixed Rent & Occupancy:** Possession has been maintained for over 30 years at a constant rent not exceeding the land revenue.
- ➔ **Reclamation & Improvement:** The predecessor-in-interest transformed the once-uncultivable land into fertile soil through significant personal capital and labor.
- ➔ **Covenant against Ejectment:** An express agreement exists guaranteeing permanent tenure and immunity from enhancement of rent or eviction.
- ➔ **Extinguishment of Title:** By admitting the plaintiffs' status as occupancy tenants since 1956, the defendants' ownership rights stand statutorily extinguished.



4. Given the defendants' threats of forcible dispossession, which would cause irreparable injury, the plaintiffs seek a declaratory decree and permanent injunction. Notably, the defendants were proceeded against *ex-parte* on 20.05.2019, despite being duly served.

5. Plaintiff was afforded full and unhindered opportunity to adduce their respective oral and documentary evidence. Upon an exhaustive and meticulous evaluation of the evidentiary record, the learned Trial Court concluded the proceedings by dismissing the suit. The subsequent appeal preferred by the appellants—plaintiff before the learned First Appellate Court was also dismissed, thereby affirming the findings of the Trial Court. It is against these concurrent and consistent determinations that the appellants have approached this Court by way of the present RSA.

6. The appellant, seeking redressal, have invoked the appellate jurisdiction of this Court to assail the judgments and decrees rendered by the Courts below. In the considered view of this Court, it was appropriate to first examine the merits of the appellants' contentions before issuing notice to the respondents. Accordingly, the appeal was initially subjected to preliminary scrutiny and heard in full on the submissions advanced exclusively by learned counsel for the appellants.

7. This Court has afforded the learned counsel for the appellants an extensive hearing and has accorded a meticulous, reasoned, and judicious evaluation to the submissions in the context of the underlying pleadings and the evidentiary corpus. The entirety of the record has been subjected to a scrupulous and exhaustive examination to determine “*whether the concurrent findings of the Courts below are vitiated by any*



jurisdictional error, manifest perversity, or a patent misappreciation of evidence? The central question for determination is “*whether the impugned judgments exhibit any substantial legal infirmity that would necessitate the corrective intervention of this Court in the exercise of its appellate jurisdiction?*’

8. Both courts below have concurrently dismissed the appellants-plaintiffs’ suit, predicated upon the finding that the revenue entries categorize the appellants and their predecessor-in-interest as *Gair Marusi* (tenants-at-will). The courts further observed a fatal evidentiary gap regarding the discharge of rent to the landlord, concluding that a *Gair Marusi* occupant is legally precluded from unilaterally elevating their status to that of an occupancy tenant.

9. Upon an exhaustive perusal of the record, I find the findings of the courts below to be unimpeachable and free from any jurisdictional infirmity. It is a settled principle of law that the nomenclature of *Gair Marusi* denotes a precarious tenure which, absent statutory fulfillment, cannot ripen into a permanent occupancy right. This position is fortified by the ratio decidendi in **Ram Kishan and Others vs. Jagdish and Others (Neutral Citation No.: 2018:PHHC:02139)**, wherein this Court categorically observed:-

“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. ”

10. Subsequently, this settled legal position received authoritative affirmation by this Court in **Om Parkash and Others v. Har Pal Singh and Others (Neutral Citation No. 2026:PHHC:009949)**.

10.1 In view of the foregoing, it is manifest that neither the plaintiffs nor their predecessors-in-interest ever attained the status of occupancy tenants over the subject land. Ergo, the plaintiffs’ claim to proprietary title predicated upon the theory of tenancy rights through



continuous possession exceeding thirty years is legally untenable as there is no evidence of any tenancy agreement or payment of rent. The appeal, being bereft of merit, is hereby dismissed, and the concurrent findings and decrees of the courts below are affirmed in toto.

11. As a corollary to the final adjudication and disposal of the principal appeal on its merits, all ancillary, interlocutory, or pending applications are rendered otiose. Consequently, by operation of this judgment, such applications stand disposed of, as their determination has been rendered purely academic and no further judicial orders are necessitated in that regard.

03.02.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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