

RSA-9-1994 &
RSA-400-1994

2025:PHHC:121386



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA-9-1994 &
RSA-400-1994
Reserved on 04.09.2025
Date of decision: 08.09.2025**

I. RSA-9-1994
Gharsi Ram and others

...Appellants

Versus

Prayag Chand and others

...Respondents

II. RSA-400-1994
Gharsi Ram and others

...Appellants

Versus

Prayag Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Ajay Jain, Advocate for the appellant(s).

Respondent Nos.1 and 2 ex parte
vide order dated 17.11.2018.

Respondent Nos.2 to 5 ex parte
before the trial Court.

DEEPAK GUPTA, J.

These two appeals have been filed by the defendants of the case against the concurrent findings of the Courts below, while deciding two civil suits between the same parties and pertaining to the same suit property.

2. Dispute pertains to ½ share in the suit land detailed in head note the plaint, which was mortgaged by one Tulsha son of Kesha resident



of village Ghanghala in favour of the plaintiffs Laxmi Narain and others (*respondents herein*) for an amount of ₹1500/-, regarding which mutation No.283 dated 25.09.1954 (Ex.P-16) was sanctioned. Admittedly, said Tulsha expired in 1962 without leaving any legal heir.

3. It was pleaded by the plaintiffs that their mortgagor Tulsha used to be *maurusi* (occupancy tenant) on suit land since prior to 1952 and that he had perfected his title by virtue of the provisions of *The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952*. According to plaintiffs, on the death of Tulsha, his estate was escheated to the State Government, who became the owner thereof, but defendants No.1 to 26 (*appellants herein*) claiming to be erstwhile landlords got mutation No.305 dated 13.06.1963 sanctioned in their favour regarding cancellation of the *maurusi* rights of Tulsha and started claiming to be owners of the suit land to the extent of share of Tulsha. Said mutation was sanctioned after the death of Tulsha and is challenged by the plaintiffs to be wrong, illegal, null and void and not binding on their rights. According to the plaintiffs, as Tulsha had perfected his title by virtue of 1952 Act, so defendants were left with no right or title in suit land to get the impugned mutation sanctioned in their favour. As defendant had started interfering in the possession of the plaintiffs, so decree for permanent injunction was sought by filing one of the suits.

4. In the second suit, plaintiffs assailed the validity of the order dated 02.07.1986 passed by Assistant Collector, Ist Grade, Bhiwani, redeeming the suit land in favour of the defendants on the application moved by them, contending that defendants-appellants had no right to move the application for redemption, as they were no longer the owners of the suit land.

5. Both the suits were contested by the defendants-appellants on



the ground that Tulsha being the occupancy tenant had limited rights only in the suit land and that after his death in 1962 and leaving behind no legal heir, suit land reverted to the defendants being land owners and so mutation was rightly sanctioned in their favour. They disputed the locus of the plaintiffs to challenge the mutation in this regard. They also defended the order dated 02.07.1986 of Assistant Collector, 1st Grade, Bhiwani to be legal and valid and thus, prayed for dismissal of both the suits.

6. Both the suits were consolidated. Necessary issues were framed. Evidence produced by the parties was taken on record.

7. Trial Court found that as per entries of jamabandi for the year 1953-54 (Ex.P9), Tulsha was recorded to be owner of $\frac{1}{2}$ share in the suit land and as per the column No.12 of the jamabandi, said Tulsha being an occupancy tenant had become owner on the basis of letter No.176/R/52/890 dated 25.03.1952. It was concluded that since Tulsha had already perfected his title in the suit land, therefore, the said land could not revert to the defendants being the erstwhile landlords, after the death of Tulsha as issueless. Accordingly, impugned mutation No.305 dated 13.06.1963 in favour of the defendants along with subsequent mutation and also the impugned order dated 02.07.1986 of Assistant Collector 1st Grade, Bhiwani, redeeming the suit land were held to be null and void. Both the suits were accordingly decreed vide judgment dated 16.01.1992.

8. Two separate appeals filed by the defendants were heard together by the First Appellate Court and vide common judgment dated 01.09.1993, the same were dismissed, thus affirming the findings of the trial Court.

9. Assailing the aforesaid concurrent findings, two fold submissions have been made by learned counsel for the appellants-defendants. It is urged that no doubt, Tulsha was an occupancy tenant prior



to coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 but a declaration by the court was necessary to perfect his title under the said Act. Learned counsel refers to ***Shiv Charan Vs. Financial Commissioner, Haryana and others 2004 (4) RCR (Civil) 543.*** The second contention made by learned counsel is that as Tulsha died without leaving any legal heirs, therefore, his rights were extinguished and the suit land reverted to the owners in view of Section 59 of the Punjab Tenancy Act, 1887.

10. After hearing learned counsel for the appellants-defendants, this Court does not find any merit in any of his contentions.

11. The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 came into force on 15.06.1952. By virtue of Section 3 of the said Act, all rights, title and interest of the landlord in the land held under him by an occupancy tenant were extinguished and such rights, title and interest were deemed to vest in the occupancy tenant free from all encumbrances.

12. In the present case, it has not been disputed by learned counsel for the appellants that Tulsha was recorded as an occupancy tenant in the suit land prior to coming into force of 1952 Act. As such, by virtue of 1952 Act, all rights, title and interest in suit land belonging to the erstwhile landlords i.e. defendants stood vested in Tulsha, who was earlier recorded to be occupancy tenant. It was specifically so mentioned in jamabandi for the year 1953-54 (Ex.P9), recording Tulsha to be owner of the suit land, with the remarks that he had become owner on the basis of letter No.176/R/52/890 dated 25.03.1952.

13. The contention of learned counsel for the appellants to the effect that a declaration by the Civil Court was necessary to hold that Tulsha had become owner on account of *The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952*, has no force. ***Shiv Charan Vs. Financial***



Commissioner, Haryana and others (supra) relied by counsel for the appellants is not applicable to the facts of the present case. In that case, the issue before Full Bench of this Court was regarding the jurisdiction, as to whether it is a Civil Court or the Revenue Court, which has to determine the dispute as envisaged under Section 77 (3)(d) of the Punjab Tenancy Act, 1887 and this Court held as under:-

*"8. We are, however, of the opinion that this very issue had been raised before and repelled by the Division Bench in **Amin Lal's case**. The Bench noticed that expression "Occupancy tenant" included two types of occupancy tenants, namely, (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. The Court observed that after the coming into force of the Vesting Act, what was required was in fact a declaration of title based on the fact as to whether a person claiming a right of occupancy had in fact become the owner, though for arriving at this conclusion, it would often be necessary for the Court to examine the conditions prescribed by the Vesting Act, and to determine as to whether they had been fulfilled. The Court further observed that after the coming into force of the Vesting Act, there was a simultaneous extinguishment of the rights of Occupancy and conversion of the same into ownership and as such a declaration of title could be given only by the Civil Court. It was accordingly concluded as under:-*

"A Civil Court has jurisdiction to try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or implied barred. A suit in which the right to property is to be decided is beyond doubt a suit within the cognizance of a Civil Court. A provision of law which takes away such a jurisdiction has to be strictly construed. [Section 77\(3\)\(d\)](#) of the Tenancy Act takes out of the jurisdiction of a Civil Court only that suit which is instituted to



establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. After the coming into force of the Vesting of Proprietary Rights Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership."

14. It is thus clear from the above said conclusion drawn by Full Bench of this Court that it is a Civil Court, which had the jurisdiction in the matter so as to declare that rights of occupancy tenant ceased to exist and had been converted into ownership.

15. This Court is of the considered opinion that the question of exercising any such jurisdiction will arise, only when any such dispute is raised. However, in present case, Tulsha had already been recorded to be owner of the suit land in jamabandi for the year 1953-54 (Ex.P9), having acquired the said rights on the basis of letter No.176/R/52/890 dated 25.03.1952, as appeared in the evidence. It is conceded by learned counsel for the appellants-defendants that the said order dated 25.03.1952, as referred in the jamabandi for the year 1953-54 was never challenged by the defendants-appellants, either during life time of Tulsha, who expired in 1962 or thereafter. Once it is found that Tulsha had already been recorded to be the owner of the suit land in the revenue record as per the jamabandi for the year 1953-54, there was no question of getting a declaration by him from the Court to the effect that he had become the owner by virtue of the 1952 Act.

16. Tulsha had died without leaving any legal heirs in 1962. He was already recorded as an owner well before his death. As such, the defendants-appellants, the erstwhile landlords were left with no right, title or interest whatsoever in the suit land so as to seek redemption of the same.



17. In view of the above discussion, it is found that the trial Court rightly held that mutation No.305 dated 13.06.1963 in favour of the defendants, reverting the land to erstwhile owners, was wrongly sanctioned and as such, said mutation was rightly set aside. It has also been rightly held by the trial Court that order dated 02.07.1986 passed by Assistant Collector, 1st Grade, Bhiwani, redeeming the land on the application moved by the defendants could not be upheld, as defendants being no longer the owners, had no right to claim redemption. The Appellate Court on re-appreciation of evidence, has rightly upheld the judgment of the trial Court.

18. Thus, the Courts below did not commit any error in decreeing the two suits. There is no ground to interfere in the well-reasoned concurrent findings of facts recorded by the Courts below in the absence of any illegality or perversity. As such, both the appeals are held to be devoid on merits and are hereby dismissed.

08.09.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No