



(101)

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

RSA-742-1989 (O&M)

Reserved on:- 07.08.2025

Pronounced on:- 18.08.2025

Jage (since deceased) through LRs

...Appellant(s)

Versus

Muthra

...Respondent(s)

**CORAM:**      **HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present:- Mr. Ashish Aggarwal, Senior Advocate,  
with Mr. Vikram Singh, Advocate,  
Mr. Sanjiv Gupta, Advocate,  
Mr. Vishal Pundir, Advocate,  
for the appellants.

Mr. Rakesh Sobti, Advocate,  
for respondents No. 1 (i) and (ii).

Mr. Vijay Kumar Jindal, Senior Advocate,  
with Mr. Rajender Goel, Advocate,  
Mr. Akshay Jindal, Advocate,  
Mr. Vijayveer Singh, Advocate, Mr. Sushil Jain, Advocate,  
for respondents No. 1 (iii), (iv) and (vii).

Mr. Dharamveer Sharma, Senior Advocate,  
with Mr. Ashwani Kumar Antil, Advocate,  
for respondents No. 1 (v) and (vi).

\* \* \* \*

**VIRINDER AGGARWAL, J.**

1.           The plaintiff/appellant (Jage) since deceased filed a suit for declaration claiming himself to be an occupancy tenant of land measuring 31 kanals and 11 marlas comprised in Khewat No. 20, Khata No. 63, bearing Khasra Nos. 9//11(7-11), 13//21 (8-0) 1(8-0), 22//12 (8-0) situated at Village Liwaspur, Tehsil and District Sonapat on the ground that he was in cultivating possession of the land for the last more than 100 years through his predecessor-

in-interest as tenant and was paying fixed nominal rent. The rent had never been increased, though the prices of agricultural produce had gone up. There was an agreement between the parties at the time of inception of tenancy that the plaintiff would never be ejected from the land in question. As such, he had acquired occupancy rights under Section 8 of the Punjab Tenancy Act, 1887 and became owner of the land as per the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

2. On notice, defendant (Muthra) denied the allegations and alleged that the suit land was the reserved area of the defendant. From the pleadings of the parties, the following issues were framed:-

- (i) *Whether the plaintiff has become the owner of the suit land on account of their occupancy rights as alleged? OPP*
- (ii) *Relief.*

3. The suit was held to be not maintainable before Civil Court by learned Civil Judge, but in appeal, learned District Judge, Sonapat, remanded the case for fresh decision vide order dated 30.07.1987 holding that the suit was maintainable. The suit was dismissed by learned Civil Judge on 17.09.1987 by recording a finding that there was no agreement between the parties at the time of inception of the tenancy that the plaintiff would never be ejected from the land in dispute as has been admitted by the plaintiff in his cross-examination that he was not aware whether any such talk had taken place between his predecessor and the predecessor of the defendant. Learned Civil Judge also rejected the contention that the plaintiff is paying fixed nominal rent and the rent has never been increased.

4. Learned First Appellate Court dismissed the appeal preferred by the plaintiff by upholding the judgement and decree passed by the learned Civil Judge, Sonapat.

5. Aggrieved by the judgements and decrees so passed, the present appeal has been filed.

6. Notices were served upon the respondents. Record was requisitioned. Arguments were heard at length.

7. Mr. Ashish Aggarwal, learned senior counsel for the appellants, assailed the findings of both the Courts below by placing reliance upon Division Bench judgement of this Court in *Hazara Singh Vs The Financial Commissioner, Haryana*, 1995 PLJ 75, wherein Mangta was engaged as tenant under Chhajju on payment of Rs. 80/- per annum as lease amount and on the basis of continuous and long possession over the suit land for over 30 years by tenant Garibu son of Mangta, his legal representatives claimed that they had become occupancy tenants in respect of the suit land as there was no increase in rent and they had also installed a tube-well in the year 1976-1977 without any objection from the side of Hazara Singh and others. The suit was resisted on the ground that there was no specific agreement for creation of occupancy tenancy between the parties at the time of inception of tenancy. The tenants were in possession of the land in dispute only as tenants-at-will and there was increase in annual rent from Rs. 80/- per annum to Rs. 115/- per annum as shown in Khasra Girdawri for the year 1947-1948 and later on this rent was increased to Rs. 200/- per annum in the year 1949-1950. The Division Bench of this Court in *Hazara Singh* (supra) relied upon the decision of Single Bench of this Court in *Muni Ram and others Vs. Phullia and Lalu*, 1974 PLJ 369 has held that Mangtu is not occupancy tenant.

8. The law as culled out in relevant para 6 of the judgement in *Hazara Singh* (supra) is reproduced below for ready reference and convenience:-

*"6. In Single Bench Authority of this Court in Muni Ram and Ors. v. Phulla and Lalu, 1974 P.L.J. 369 after considering various other authorities of this Court in Tota Ram v. Rana Bashisht Singh Chandra, 1952 L.L.T. 1 Devki Nandan and Ors. v. Shiv Lal, 1957 P.L.J. 47 Anant Ram and Ors. v. Lakhbir Gupta, 1962 P.L.J. 20, and Raghbir Singh v. Beli Ram, (1967)69 P.L.R.D. 396, it was observed as under :-*

*"The following propositions of law are firmly settled :-*

*(1) The intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement, which, came into existence at the time of the commencement of the tenancy.*

*(2) Mere length of possession does not entitle a tenant to acquire occupancy rights in the land in his possession as a tenant.*

*(3) The intention behind the wide scope left for Section 8 of the Punjab Tenancy Act is:*

*(a) not to restrict the tenant in any way from establishing his right of occupancy; and*

*(b) to pre-suppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Section 5 and 6 of the Punjab Tenancy Act.*

*(4) In cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted.*

*(5) A very strong presumption of the implied promise not to eject a tenant, and, therefore, of the existence of an occupancy tenancy in favour of such a tenant can be raised:-*

*(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effort was made by the landlord to enhance the rent; and*

*(b) where despite the existence of a stray entry which is inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant."*

*The aforesaid authority in Muni Ram's case was followed by another Single Bench Authority or this Court in Rattan Singh and Ors. v. The Financial Commissioner Haryana and Ors., 1986 P.L.J. 531, However, in the latter authority in Rattan Singh's case the first tenant remained in possession of the land in dispute in record of rights relating to 1877, 1889-90 and 1893-94 and thereafter the second tenant remained in occupation till 1902-03. Thereafter his three sons were shown as tenants in the records of rights uptill 1946-47. It was observed by the single Judge that such a long possession was indicative of the intention of the landowners not to evict the tenant and secondly that the Chakota was only 6 per cent of the produce and the same was considered to be nominal rent because the landowners could claim rent to the extent of 1/3rd of the produce. Besides there was evidence that the trees were not that old, and, seems to have been planted by the present tenant and his fore-father in the land in dispute. On the basis of cumulative effect of all these circumstances the declaration of acquisition of occupancy rights was granted."*

9. The Division Bench in *Hazara Singh* (supra) recorded its findings in para 7 which are reproduced as under:-

“7. The afore-cited authority in Rattan Singh's case is not applicable to the case in hand in as much as possession in the instant case is merely 30 years and there is no specific evidence either that at the time of the inception of the tenancy there was any agreement between the original land owners and the tenant that the latter would not be ejected from the tenancy at all, or, that such an intention can be gathered merely from the fact that Garibu as a tenant had installed tube-well in the land in dispute without producing any cogent and reliable evidence relating to the nature of tenancy at its very inception. Before taking electric connection for their tube-well the tenants naturally would have submitted application in writing to the competent authority. Normally the tenants would be expected to mention their interest in the suit land in which tube-well had been installed and electric connection was required. Since the electric connection was obtained by the tenants before any dispute arose between the parties concerning the nature of the tenancy, such documentary evidence would be material for determining the dispute about the exact nature of tenancy. No such evidence has been produced in the instant case. Besides, in the instant case, the annual rent was increased by the tenant on more than one occasion. Thus mere fact that the rent was nominal or that the tenants had installed a tube-well in the land in dispute, in our view, would not be sufficient to hold that Garibu or his predecessor or successors-in-interest had acquired rights as occupancy tenants therein. In view of the facts and circumstances referred to above in our view the authority in Rattan Singh's case (Supra) which is based on peculiar facts concerning very long possession of the tenants for over 70 years, is not at all applicable to the facts and circumstances of the present case. We are further of the view that the authority in Rattan Singh's case (Supra) would be applicable only to the limited extent, where tenants claim occupancy rights on the basis of very long possession coupled with other circumstances which would indicate that the intention of the landowner was not to eject the tenant for ever. We do not approve that the view expressed in Rattan

Singh's case would be applicable to other cases like the one in hand where the tenancy is little more than 30 years and rent though nominal had been increased on more than one occasion. We, however, approve the view taken by Single Bench of this Court in Muni Lal's case (Supra) which is the consistent view followed by this Court.”

10. From the findings recorded by the Division Bench in *Hazara Singh* (supra), it can be safely concluded that in order to claim occupancy tenancy, there should be an agreement between the parties at the time of inception of tenancy that tenant would not be ejected from the tenancy at all or the intention could be gathered from the facts and circumstances of the case. In the present case, there is long possession of the tenant over the land in dispute for more than 100 years and there was no resistance to the possession of the tenant for nearly 60 years as the litigation commenced between the parties in 1960.

11. Section 9 of the Punjab Tenancy Act, 1887 is reproduced hereunder:-

*“9. Right of occupancy not to be acquired by mere lapse of time - No tenant shall acquire a right of occupancy by mere lapse of time.”*

12. It is evident from a plain reading of Section 9 of the Act *ibid* that mere long possession is not sufficient to lay claim as occupancy tenant.

13. Mere fact that the rent was nominal would not be sufficient to hold that the tenant had acquired rights as occupancy tenant therein. In the present case also, admittedly, the appellant has failed to prove on record any agreement between the parties at the inception of tenancy that the tenant would not be ejected at all from the land in question as none of the persons present at the time of creation of initial tenancy was alive and had been examined and the plaintiff (Jage) had categorically admitted in his cross-examination that he was not aware about the talks which took place at the time of creation of tenancy. It is proved on record that rent had been increased continuously and gradually

upto 1960 when the litigation between the parties commenced and after that since the parties were in litigation, there was no increase in rent by consensus of the parties. The rent even though was nominal, as compared to the agricultural produce, but it was increased continuously. So, the conditions set out as per judicial precedent(s) for conferring the status of occupancy tenant are not met with and there is no illegality or infirmity in the concurrent findings recorded by both the Courts below. The findings of both the Courts below are well reasoned and based upon correct appraisal of pleadings and evidence on record and, thus, do not warrant any interference.

14. The appeal, accordingly, stands dismissed.

**(VIRINDER AGGARWAL)**  
**JUDGE**

18.08.2025

Amodh Sharma

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