



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: September 17, 2025
Pronounced on: September 23, 2025

RSA No.59 of 1993

Hem Raj @ Hema Ram (since deceased) through LRs Appellant

Vs.

Gian Chand (since deceased) through LRs and Ors. . . . Respondents

*** * * ***

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ashok Verma, Advocate for the appellant.

Mr. Mohan Singla, Advocate for the respondents.

DEEPAK GUPTA, J.

Plaintiff Hem Raj (*now represented through his legal representatives*) has approached this Court in the present Regular Second Appeal challenging the judgment & decree dated 04.09.1992 passed by the learned Additional District Judge, Sirsa, whereby the judgment & decree of the learned Sub-Judge 1st Class, Sirsa, dated 16.08.1990 decreeing the suit for declaration in favour of the plaintiff was reversed and the suit was dismissed.

2. For convenience, the parties shall be referred to as per their status before the trial Court. The trial Court record was called. The same has been perused.

3. ***Plaintiff's Case:*** The plaintiff claimed that he and, prior to him, his father Mam Raj had been in possession of the suit land as occupancy ten-

ants since long before the enforcement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 ("the 1952 Act"). On commencement of the Act, his father acquired ownership rights by operation of law. The plaintiff alleged that in the revenue record, the defendant continued to be shown as owner and the plaintiff as a tenant on *batai tihai* (on payment of 1/3 produce), which was incorrect. On receiving notice dated 09.03.1987 from the defendant, he filed the suit seeking declaration of ownership and correction of revenue entries. Alternatively, he claimed ownership by adverse possession on account of his long, continuous and hostile possession.

4. **Defendant's Case:** The defendant resisted the suit, pleading that the plaintiff was merely cultivating the land on payment of one-third batai and had never acquired occupancy rights. He also denied the plea of adverse possession.

5. **Trial Court Findings:** After framing of the issues and taking evidence, the trial Court decreed the suit by relying upon jamabandis from 1923-24 onwards and found that Mam Raj, father of the plaintiff, was consistently recorded as occupancy tenant up to 1951-52. Applying Section 3 of the 1952 Act, it held that the plaintiff's father had become owner of the suit land by operation of law. Later entries showing the defendant as owner and the plaintiff as tenant at will were declared wrong and void. The suit was accordingly decreed.

6. **First Appellate Court Findings:** The First Appellate Court, however, raised a suo motu doubt about the identity of the suit land. Referring to jamabandis from 1960-61 onwards, it concluded that the defendant was recorded as owner and the plaintiff as a non-occupancy tenant on *batai tihai*. On this basis, it dismissed the suit.

7. **Submissions:** (i) Assailing the reversal, Learned counsel for the appellant argued that the First Appellate Court exceeded its jurisdiction in raising a new plea regarding identity of land, which was never set up in the written statement, not put to the witnesses, nor even argued before the trial

Court. It was contended that such a ground could not have been made out suo motu, relying on settled law [*Siddu Venkappa Devadiga v. Rangu S. Devadiga*, 1977 AIR SC 890; *Gulabrao Balwantrao Shinde and others v. Chhabubai Balwantrao Shinde and others*, AIR 2003 SC 160].

(ii) It is further submitted that the documentary evidence from 1923-24 to 1956-57 consistently recorded Mam Raj as occupancy tenant. Under Section 3 of the 1952 Act, he automatically became the owner on the appointed date, and subsequent entries showing him as gair maurusi were erroneous. Reliance is also placed on *Durga (Deceased) and others v. Milkhi Ram and others*, 1969 PLJ 105, to argue that later entries made without proper mutation or authority cannot dislodge earlier consistent entries.

8. Conversely, learned counsel for the respondents supported the First Appellate Court judgment, arguing that the plaintiff failed to prove continuity of occupancy tenancy in respect of the suit land.

9. This Court has considered submissions of both the sides and has appraised the entire record carefully.

10. The following substantial questions of law arise for consideration in this appeal:

- Whether the First Appellate Court was justified in raising a suo motu dispute regarding identity of the suit land when no such plea was raised in the pleadings, evidence, or grounds of appeal by the defendant?
- Whether, in view of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, the plaintiff's father, who was recorded as an occupancy tenant prior to the appointed date, became the owner of the suit land by operation of law?
- Whether subsequent revenue entries showing the defendant as owner and the plaintiff as gair maurusi on payment of *batai tihai*, without any

mutation or supporting order of a competent authority, could legally divest the plaintiff of vested proprietary rights?

11. It is rightly contended by learned counsel for the appellant that the question of identity of the suit land was never raised by the defendant in pleadings, evidence, or even in the grounds of appeal before the First Appellate Court. A perusal of paras 1 and 2 of the plaint and corresponding paras in the written statement shows that while the defendant denied the plaintiff's claim of occupancy tenancy and ownership under the 1952 Act, he never disputed that the suit land earlier formed part of Khasra No.354/244 as per jamabandi of 1951-52.

12. The trial Court record also bears this out. No suggestion disputing the identity of the land was put to PW1 Hem Raj, and DW1 Prem Chand rather admitted that Muslims were earlier owners and the land might have been allotted to his father Ishar Dass in 1950-51. Even in the memorandum of appeal before the First Appellate Court, no such objection was raised.

13. The law is well settled that an appellate court cannot make out a new case not pleaded by the parties. [***Siddu Venkappa Devadiga v. Rangu S. Devadiga*, 1977 AIR SC 890; *Gulabrao Balwantrao Shinde and others v. Chhabubai Balwantrao Shinde and others*, AIR 2003 SC 160; *Sen Dass v. Lachhman Dass*, 1981 CLJ 387]. Thus, the First Appellate Court clearly erred in raising a suo motu dispute regarding the identity of the suit land.**

14. The core controversy is whether the plaintiff's father, Mam Raj, held occupancy rights in the suit land prior to the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 ("1952 Act"), and if so, whether such rights matured into ownership.

15. From the jamabandis on record, Hakim was recorded as owner of the land between 1923-24 and 1943-44, while Mam Raj and his predecessors were consistently reflected as *maurusi* (occupancy tenants). This position continued till 1951-52, where Mam Raj remained shown as an occu-

pancy tenant, even though the land was then described as *arazi matruka* (evacuee property). By the next jamabandi (1956-57), the ownership column reflected “refugees,” but Mam Raj continued as occupant. Only from 1960-61 onwards did entries suddenly change to show defendant Ishar Dass as owner and Mam Raj as *gair maurusi* on *batai tihai*. These later entries were repeated in subsequent jamabandis and relied upon by the First Appellate Court to treat Mam Raj as tenant at will.

16. This approach is legally flawed. The consistent record up to 1956-57 establishes Mam Raj’s status as *maurusi*. Under Section 2(a)(i) and Section 2(f) of the 1952 Act, any person recorded as an occupancy tenant immediately before 15 June 1952 stood vested with full ownership rights under Section 3. Since Mam Raj was so recorded, ownership vested in him by operation of law. Later entries from 1960-61 onwards showing Ishar Dass as owner and Mam Raj as *gair maurusi* are thus contrary to the statute.

17. As held in ***Durga (Deceased) and others v. Milkhi Ram and others, 1969 PLJ 105***, later revenue entries carry only a rebuttable presumption and can be ignored if unauthorized or unsupported by proper orders. That is precisely the case here.

18. The defendants produced no evidence to establish how or under what authority the entries were altered. DW1 stated only that *batai tihai* was given for 2-3 years, but no supporting proof was furnished. PW1 Hem Raj categorically denied payment of any rent.

19. Accordingly, the revenue entries showing Ishar Dass as owner and Mam Raj as *gair maurusi* are held to be illegal, void, and liable to be ignored. The legal position remains that Mam Raj became the full owner by virtue of Section 3 of the 1952 Act, and the plaintiff, as his successor, is entitled to claim the same.

20. Thus, the First Appellate Court committed a serious error in law and fact. The trial Court’s findings are consistent with documentary evidence and correct application of the 1952 Act.

21. *Conclusion:* For the reasons recorded above, all the substantial questions of law are answered in favour of the appellant. The judgment and decree dated 04.09.1992 passed by the First Appellate Court are set aside. The judgment and decree dated 16.08.1990 of the trial Court are restored.

22. It is declared that the plaintiff is the owner in possession of the suit land and that revenue entries showing the defendant as owner and the plaintiff as gair maurusi on batai tihai are wrong, illegal, and void, and not binding on the plaintiff’s rights. Decree sheet be prepared accordingly.

Appeal is accepted in above terms.

September 23, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

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