



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

**CM-19253 & 54-C-2018,
CM-3060-C-2025 in/and
RSA-9933-2018 (O&M)
Decided on : 21.07.2025**

Banwari Lal & ors.

....Appellants

Versus

Shri Jasodi Nandan & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Aditya Jain, Advocate for
Mr. Rahul Vohra, Advocate for the appellants.

PANKAJ JAIN, J. (ORAL)

CM-19253-C-2018 & CM-19254-C-2018

Present applications have been filed for condonation of delay of 99 days in re-filing and 01 day in filing the present appeal.

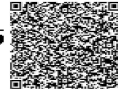
For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have shown sufficient cause to condone the delay in re-filing and filing the appeal.

Applications are allowed. Delay of 99 days in re-filing and 01 day in filing the present appeal is condoned.

CM-3060-C-2025

Order dated 24.02.2025 has been complied with. Judgment and decree passed by the Appellate Court has been placed on record.

Application is allowed. Judgment and decree dated 07.05.2018 is taken on record.



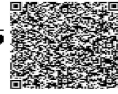
RSA-9933-2018

1 The plaintiffs filed a suit seeking decree of declaration, claiming that they have become owners of the land measuring 9 kanals and 10 marlas by virtue of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter the '1952 Act'). Plaintiffs claimed that they occupy the land as tenant/gair moursi in actual cultivation for continuous possession of last more than 50 years and have thus become owner after vesting of ownership rights by the dint of Section 3 of the 1952 Act. They further claimed ownership on the strength of adverse possession being in continuous possession of the suit land.

2 The suit was contested by the defendants denying the rights of the plaintiffs. It was denied that the plaintiffs are occupancy tenants. Defendants further pleaded that in terms of the Revenue Records, the land has been let out at an annual rent of Rs.92.25 paise and the land revenue cess is Rs.25/- per year. Therefore, the plaintiffs, described as *pattedar-dwami* (i.e., sub lessees), cannot claim ownership under the 1952 Act.

3 On the basis of the pleadings Court of the First Instance framed following issues :-

- “1. Whether the plaintiffs are entitled to decree of declaration, as prayed for? OPP.*
- 2. Whether the plaintiffs are entitled for a decree of permanent injunction, as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*



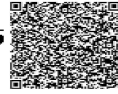
4. *Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD.*

5. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.”*

4 The Trial Court while returning finding on issue No.1, held that the lease deed Ex.P-12 was executed in favour of one Lala Narayan Dass by Anisha Khatun for a sum of Rs.2,500/-. There is no evidence on record to prove the payment of lease deed by predecessor of the plaintiffs *qua* the lease and thus plaintiffs cannot claim occupancy tenancy under Section 5 of the Punjab Tenancy Act, 1887. The Trial Court further considered jamabandi for the year 1972-1973 (Ex. P-8) wherein the plaintiffs have been recorded as Pattadars in the Revenue record. However, holding that the plaintiffs never purchased perpetual leasehold rights from the owners of the suit property, but only purchased the same from the previous lessees, the Court of the First Instance held that they cannot be held to be occupancy tenants. The plea of adverse possession raised by the plaintiffs was also declined, holding that mere long possession over the suit property cannot be held enough to bestow the plaintiffs with ownership.

5 The aforesaid findings stand affirmed by the Lower Appellate Court.

6 Counsel for the appellants-plaintiffs has assailed the findings of the Courts below. He submits that both Courts have completely ignored document Ex.P-10, which is the judgment and decree passed in the suit filed by co-tenant in a suit titled as *Anil Kumar Vs. Barfi Devi*. He further submits that in the said judgment, plaintiffs had pleaded custom. The said



plea found favour with the Courts and they were declared to be occupancy tenants and were vested with ownership rights.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 So far as the argument raised on the strength of Ex. P-10 is concerned, the same is misplaced and misconceived. Counsel for the appellants could not point out any averment made in the pleadings which can lead to the inference that the plaintiffs pleaded custom to claim occupancy tenancy rights. Trite it is that the custom is not only required to be pleaded, but also needs to be proved. That apart even in Ex.P-10, there is no finding recorded by the Court below that the plaintiffs became occupancy tenants on the strength of any custom prevailing in the village. No effort was made in the present suit to prove the existence of custom by bringing on record *wajib-ul-arz*.

9 In view of above, this Court does not find any reason to disturb findings recorded by the Court below on issues No.1 & 2. No other issue has been raised during course of arguments.

10 Finding no merits in the present appeal, the same is ordered to be dismissed.

11 Pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

21.07.2025

Pooja Sharma- I

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No