



RSA-3102-1994 (O&amp;M)

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

S.No.107

**RSA-3102-1994 (O&M)****Reserved on : 05.03.2025****Date of decision : 28.5.2025**

Hans Raj (since deceased) through his LRs

... Appellants

VERSUS

Kasturi Bai and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Argued: Mr. M.L.Sarin, Sr. Advocate with  
Ms. Hemani Sarin, Advocate and  
Mr. Jagnoor Singh, Advocate,  
for the appellants.

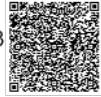
Mr. Vijay Kumar Jindal, Sr. Advocate with  
Mr. Akshay Jindal, Advocate and  
Mr. Abhishek Shukla, Advocate,  
for the respondents.

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**PANKAJ JAIN, J.**

The defendant is in appeal. The plaintiffs filed suit for declaration to the effect that defendant No.1-Hans Ram has no concern with the suit land as described in the plaint. The plaintiffs and defendants No.2 to 4 are owners as co-sharer and are in possession of the suit land. The entries made in Khasra Girdawari since Kharif, 1982 in favour of defendant No.1-Hans Ram are illegal, null and void and not binding on the rights of the plaintiff.

2. As per case pleaded by the plaintiffs, the suit land was owned by Janki Parsad son of Sunder, predecessor-in-interest of the plaintiffs. He sold ½ share of his land to defendants No.2 to 4 on 28.07.1976 vide



registered sale deed. Janki Parsad was left with  $\frac{1}{2}$  share in the suit land. Janki Parsad died on 19.04.1977. The land was inherited by Bansi Dhar. After the death of Bansi Dhar, inheritance came to plaintiffs No.1 to 6 and they are owners in possession thereafter. As per the plaintiffs, they are living far away in Sambalpur, Orissa. Defendant No.1 in connivance with defendants No.2 to 4 and with the help of Revenue Officials managed entries in the Khasra Girdawari from Kharif 1982 onwards despite never being in cultivating possession of the suit land.

3. The suit was contested by defendant No.1 who questioned the locus of the plaintiffs to file the present suit. Ownership of Janki Parsad to the extent of  $\frac{1}{2}$  share was admitted. However, it was denied that possession was over delivered to defendants No.2 to 4. Defendant No.1 claimed that he being in possession of the suit land as tenant over the entire land, defendants No.2 to 4 could not have been handed over the possession.

4. Defendants No.2 and 3 filed written statement supporting the case of defendant No.1 being his sons. They admitted that land is in possession of defendant No.1 for the last 40-41 years.

5. On the basis of the pleadings, following issues were framed in the case :-

- “1. *Whether the defendant is in possession of the land in dispute as tenant? OPD*
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Whether the civil court has no jurisdiction to decide this case? OPD*
4. *Whether the suit is barred by limitation? OPD*
5. *Relief.”*



6. Answering issue No.1, the Court of First Instance found that affidavits Ex.P1 and P2 brought on record by the plaintiffs in their evidence show that the plaintiffs were in possession of the suit land prior to 11.11.1970. In the revenue record, defendant No.1 has been shown to be in possession as *Gair Marusi*. As per Ex.P3 Jamabandi for the year 1965-66, defendant No.1 is shown to be in possession of the suit property as *Gair Marusi* and in column No.9, entry is '*bawajah mail jole*'. The Court of First Instance relied upon entries in Khasra Girdawari to hold that Hans Ram having been depicted as *Gair Marusi* tenant on *Batai-Tihai* is in possession as a tenant. The Court of First Instance further relied upon Ex.D7 statement of the plaintiffs before the Revenue Authorities to hold that possession of the plaintiff having been admitted as tenant and there being no evidence with respect to surrender of tenancy, the suit filed by the plaintiffs deserves to be dismissed.

7. In appeal preferred by the plaintiffs, the Lower Appellate Court reversed the findings recorded by the Trial Court relying upon affidavits Ex.P1 and P2 to hold that defendant Hans Ram and Ami Lal having surrendered their tenancy and jamabandi Ex.P6 for the year 1971-72 showing Janki Parsad to be in possession of the suit property as owner, the case of the plaintiffs stands proved. There being no basis for change in Khasra Girdawari for the year 1982, crop Kharif in the name of Hans Ram, the said revenue entries are bad in law. The Lower Appellate Court, thus, decreed the suit filed by the plaintiffs reversing the findings recorded by the Court of First Instance.

8. Mr. Sarin Learned Senior Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. His main



ground of attack is upon documents Ex.P1 and Ex.P2-affidavits dated 11.11.1970 relied upon by the plaintiffs to prove surrender of tenancy. He submits that neither there is any plea of surrender of tenancy in plaint nor the affidavits have been proved in accordance with law. Neither the Scribe was called to prove the contents of affidavit nor Oath Commissioner was examined to prove attestation thereof. Hans Ram entered into witness box as DW1. The contents of the affidavits were never put to him and thus, the Lower Appellate Court ought not have reversed the findings recorded by the Court of First Instance. Learned Senior Counsel relied upon Section 35 read with Section 114 of the Evidence Act to submit that the entries in the revenue record have presumption of truth attached and the same has to be believed until the same are rebutted. He relies upon the ratio of law laid down by Supreme Court in **Karewwa and others v. Hussensab Khansaheb Wajantri and others AIR 2002 Supreme Court 504**. Further reliance is being placed upon **Santosh Hazari v. Purushottam Tiwari JT 2001 (2) SC 407** to submit that wherever the Trial Court findings are reversed, there arises substantial question of law and the High Court while exercising jurisdiction under Section 100 of CPC needs to interfere. He further submits that the judgment of the Appellate Court must reflect conscious application of mind and it needs to record findings supported by reasons on all the issues. Reliance is being placed upon the ratio of law laid down by this Court in **Charan Dass v. Harbans Lal All India Land Laws Reporter 2005 (3) 676**. Further reliance is being placed upon **Saddik Mohamed Shah v. Mt. Saran and others AIR 1930 Privy Council 57(1)** to submit that the plea not raised in defence, no evidence can be looked into in support thereof.



9. Learned Senior counsel for the respondents has supported the findings recorded by the Lower Appellate Court. It has been contended that defendant No.1-appellant claims to be a tenant prior to succession of the present plaintiffs. Thus, ownership of Janki Parsad stands admitted. There is no evidence on record to show that defendant No.1 ever remained tenant under predecessor-in-interest of the plaintiffs-respondents as he was merely recorded as '*Gair Marusi*' without paying any rent.

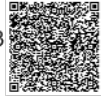
10. I have heard the learned senior counsel for the parties and have carefully gone through the record of the case.

11. Defendants No.2 to 4 are sons of defendant No.1. It is admitted case that defendants No.2 to 4 purchased  $\frac{1}{2}$  share from Janki Parsad. So far as the ownership of the suit property is concerned, there is no major dispute. The dispute is regarding possession over the property and claim of the defendant that he possesses the suit property as tenant. The plaintiffs in order to prove surrender of possession by the defendants have relied upon the affidavits Ex.P1 and Ex.P2 dated 11.11.1970. The revenue entries as per Ex.P3 jamabandi for the year 1965-66, defendant No.1 has been shown to be in possession of the suit land as '*Gair Marusi Bawajah mail jole*'. There is no entry with respect to payment of rent. The question is :

*'Can defendant No.1-appellant claimed to be in possession of the suit property as tenant?'*

12. Section 4 (5) of Punjab Tenancy Act, 1887 defines, 'tenant'. Section 4(3) defines, 'rent'. Same read as under : -

**“Section 4(5) :** 'tenant' means a person who holds land under another person, and is, or but for a special contract would be,



liable to pay rent for that land to that other person, but it does not include : -

**Section 4(3)** : ‘rent’ means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him,”

13. In view of the aforesaid provisions, for a person to be a tenant, he needs to hold land under another person by paying rent. The rent can be in money, it can be in kind or by service. As per revenue record, defendant No.1 was holding land not for rent but on account of *mail jole* i.e. cordial relations. Cordial relations neither fall in the ambit of rent in kind nor can be held by a service. Though Mr. Sarin has referred to statement made by the defendant before the Revenue Authorities Ex.D7 wherein the defendant stated that defendant No.1 stopped paying rent 6 years back. However, the said statement cannot be taken as an admission as in the same statement, he stated that he does not know whether Hans Ram was paying any rent to his predecessors or not. Hans Ram defendant No.1 when entered in the witness box could not even specify the rate of rent. Thus, defendant No.1 cannot rely upon the statement made by the plaintiffs before the Revenue Authorities Ex.D7 to claim tenancy.

14. The term ‘*Gair Marusi*’ is an opposite to the expression, *Marusi*. *Marusi* means, ‘inheritance’. *Gair Marusi* thus, connotes something that negates inheritance. Reference can be made to glossary of Judicial and Revenue Terms by H.H.Wilson, 2014 Reprint. The precise expression of *Gair Marusi* and the rent being *sine quo non* to attain the status of tenant was discussed by this Court in **Rulhu Ram v. Than Singh and others 1966 PLR 866** observing as under : -



*“Moreover, there is no evidence that any rent was being paid by the defendants to the plaintiffs. As a matter of fact the entry is that they are paying no rent because of assertion of ownership. Therefore, the documentary evidence clearly shows that the entry that the tenants are non-occupancy tenants is clearly erroneous. It is well known that the revenue authorities when they find a person in possession of the land without any right normally record him as a tenant irrespective of the fact whether he is a tenant or not. Non-payment of rent negatives existence of relationship of landlord and tenant. This was so held in **Kanwar A. Ahmed Khan v. The Union of India, (1954) 56 PLR 468***

*“ The relationship of landlord and tenant comes into existence as the result of an agreement express or implied. It may implied from the acts and conduct of the parties which indicate that the landlord intended to diver himself of the possession of the premises and that the tenant intended to assume possession thereof. One of the most important circumstances from which this inference may be drawn is the payment of rent, for although rent is not an essential, it is a normal incident of tenancy, and the fact that a person in possession of the premises paid rent to the owner thereof indicates to an extent at least that the relationship of landlord and tenant exists between the parties. On the other hand the fact that no rent was paid would lead one to a contrary conclusion and negative the existence of such relationship.”*

15. In view of above, this Court finds that defendant No.1-appellant cannot claim to be in possession of land as a tenant under Janki Parsad. Even if affidavits Ex.P1 and P2 are ignored, the possession of defendant No.1 can not be said to be that of tenant ever.

16. It has come on record that in the jamabandi for the year 1971-72 onwards, Hans Ram was not recorded in possession. It was only in Khasra Girdawari for the crop Kharif 1982 that he was recorded in possession. Admittedly, there is no basis for said entry in the Khasra



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Girdawari. Apart therefrom, there is no presumption of truth attached to the Khasra Girdawari as it is not 'Record of Rights'.

17. The argument raised by Mr. Sarin regarding change in entries in the jamabandi for the year 1971-72 in the absence of there being any basis, hold good for entries in Khasra Girdawari changed after crop Kharif 1982.

18. In view of above, this Court finds that no fault can be found with the findings recorded by the Appellate Court decreeing the suit filed by the plaintiffs. The Court of First Instance erred in holding possession of defendant No.1 to be that of tenant without there being any entry in the Record of Rights regarding payment of rent. Entry of *Bawajah mail jole* does not bestow status of a tenant on the possessee. Ergo, this Court finds that defendant No.1 having failed to prove his status to be in possession of the suit land cannot resist the claim of the plaintiffs for declaration.

19. In view of above, finding no merit in the present appeal, the same is ordered to be dismissed.

**( PANKAJ JAIN )**  
**JUDGE**

May 28, 2025  
Paritosh Kumar

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