

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-5809-2018 (O&M)****Date of decision: 23.01.2025****Maan Singh and others****...Petitioner(s)****Vs.****Purshotam and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for the petitioners.

*********NIDHI GUPTA, J.**

The plaintiffs are in second appeal before this Court against the concurrent findings of the learned Courts below, whereby the suit for declaration and perpetual injunction filed by the plaintiffs, has been dismissed by the learned Civil Judge (Junior Division), Narnaul vide judgment and decree dated 22.04.2015; and the appeal filed by the plaintiffs has been dismissed by the learned District Judge, Narnaul vide judgment and decree dated 25.07.2018.

2. The parties shall hereinafter be referred to as per their status before the learned trial court i.e. The appellants are the 'plaintiffs'; and the respondents are the 'defendants'.

3. The brief facts of the case as stated in the plaint are that the plaintiffs are the occupying tenants of the suit property situated at Narnaul as fully detailed in plaint. Prior to them, their forefathers had come in the exclusive ownership and possession over the estate. It is the



case of the plaintiffs that the predecessor-in-interest of the plaintiffs namely Bhagwana had occupied the estate as occupancy tenant since the past 64 years prior to filing of the suit; and due to their long-standing possession over the estate, they had acquired the occupancy and all the other appurtenant rights on account of being the occupancy tenants. It is further pleaded that after the death of the predecessor-in-interest of the plaintiffs i.e. Sh. Bhagwana, it is the plaintiffs who, being the successor-in-interest had stepped into his shoes. However, the revenue entries still reflect the names of the defendants in the column of ownership. As such, the said incorrect entries in the revenue record require to be rectified. The defendants, being the powerful people, are bent upon to alienate the suit estate. Accordingly, the plaintiffs sought a declaratory decree to the effect that the plaintiffs, and prior to them the ancestors of the plaintiffs, have been in the ceaseless, continual and exclusive possession over the suit estate; rectification of the existing revenue records as the existing revenue records still reflect the names of the defendants in the column of ownership; and as an auxiliary relief, the plaintiffs prayed for the perpetual injunction injuncting the defendants from invading their incessant possession over the suit property.

4. Upon notice, the defendant No.1/respondent No.1 had appeared and filed written statement resisting the suit on numerous grounds *inter alia* stating that originally the suit land was owned and possessed by the Muslim evacuees and the same was declared as



evacuee land by the Government of India under the administration of Evacuee Property Act and later on same was allotted to Sh. Brij Lal grand father of defendants no.1 and 2 and maternal grand father of defendants no.3 to 6 under the Displaced Persons (Compensation and Rehabilitation) Act and physical possession was handed over to Brij Lal by revenue authorities. Bhagwana son of Deda was inducted as tenant at will by predecessor in interest of defendant on payment of 1/3rd produce as rent; that the plaintiffs had remained in occupation of the suit estate as tenants at Will; and that status of the plaintiffs had also come to an end w.e.f. 22.12.2010 vide the ejectment decree passed by the competent Court of jurisdiction; whereafter the plaintiffs had been unauthorizedly occupying the suit estate. It was further asserted that as such, neither the said Bhagwana i.e. the predecessor-in-interest of the plaintiffs and after his demise, nor the plaintiffs were ever conferred with the status of occupancy tenants over the land in dispute; and that the present suit had been filed by the plaintiffs purely to harass the defendants. Accordingly, dismissal of the suit was prayed for.

5. On the basis of the pleadings of the parties, the following issues were framed by the learned trial Court:-

i). Whether the plaintiffs are entitled to be declared as owner in possession over the suit land and the revenue entries in this regard requires to be rectified after deleting the names of the defendants as owner in possession as shown in the revenue records as prayed for? OPP.

ii) Whether the plaintiffs are entitled for the permanent injunction against the defendants from causing any



interference into the peaceful possession over the suit land or for restraining the defendants from alienating the suit property, creating any charge etc. over it? OPD.

iii) Whether the suit of the plaintiff is hopelessly time barred? OPD.

iv) Whether plaintiffs are estopped from filing the present suit by their own acts and conducts? OPD.

v) Whether the plaintiffs have not come to the court with clean hands? OPD.

vi) Whether the plaintiffs have suppressed the material facts from the court? OPD.

vii) Whether the civil court does not have jurisdiction to entertain and try the present suit? OPD.

viii) Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD

ix) Relief.

6. As already mentioned above, vide judgment and decree dated 22.04.2015, the learned Civil Judge (Junior Division), Narnaul had dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Narnaul vide judgment and decree dated 25.07.2018. Hence, present second appeal.

7. Learned counsel for the appellants/plaintiffs assails the concurrent findings of the learned Courts below by submitting that in passing the impugned judgments, the learned Courts below have ignored the fact that the plaintiffs fulfilled the requirements of occupancy tenants. It has been ignored that the plaintiffs are in possession since their predecessor. As per the revenue record, it is proved that the plaintiffs are Gair Marusi which comes within the



definition of tenant. After the death of Bhagwana, the plaintiffs being his successor-in-interest have come into the exclusive and peaceful cultivation of the suit land. However, now the defendants are seeking to dispossess, alienate or create charge over the present suit property by taking undue advantage of wrong entries in their names. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside.

8. Upon a Court query, it is however, candidly admitted by learned counsel for the plaintiffs that the plaintiff No.1 as PW3 had admitted before the learned Courts below that the defendants never tried to dispossess the plaintiffs forcibly from the suit land and have never threatened to do so. In view of the above, it is lastly prayed by learned counsel for the appellants that the decree be modified to the extent that it may be directed that the defendants can dispossess the plaintiffs "only in accordance with law."

9. No other argument is raised on behalf of the appellants.

10. Heard learned counsel for the appellants.

11. At the outset, it may be pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as the matter has been adjourned at the request of learned counsel for the appellants on 19.11.2019, 15.01.2024, 20.05.2024, 25.11.2024 and 09.12.2024; or due to non-appearance of learned counsel for the appellants on 11.02.2019 and 14.10.2019,



12. It is the claim of the plaintiffs that they, and prior to them their predecessor-in-interest Bhagwana, have been the occupancy tenants over the suit estate since prior to 1947 under the landlordship of the initial owners of the suit estate. It is accordingly sought to be asserted that due to their ceaseless tenancy over the suit estate and by the operation of Section 3 of the Pepsu Occupancy Tenants (Vesting of Proprietary Right) Act 1954 (hereinafter referred to as the "Act"), has resulted into full scale ownership of the plaintiffs over the suit estate. However, a perusal of the record of the case shows that it has been well established by way of cogent evidence that contrary to their claim, the plaintiffs failed to satisfy the requirement of Section 5 of the Act, which defines 'Occupancy Tenant' as follows:

"Section 5: Tenants having right of occupancy – i) A Tenant

- a) Who at the commencement of this Act has, for more than two generations in the male line of descent through a grandfather or grand Uncle and for a period of not less than 20 years, been occupying land, paying no rent therefor beyond the amount of the land revenue thereof, and the rates and cesses for the time being chargeable thereon, or

13. Admittedly, the plaintiffs failed to prove that they have been occupying the suit estate for not less than 20 years; and have not been paying off the rent therefore, beyond the amount of land revenue thereof. As such, the plaintiffs could not establish themselves as occupancy tenants as required under the Act.



14. The Plaintiffs had also filed an application Ex.D1 under section 22 of the Act moved by the plaintiffs Maan Singh, Ram Narain and Lal Chand sons of Deda for declaration of proprietary rights under the Act. No doubt, initially the said application was allowed. However, defendants had filed appeal and vide judgment dated 7.9.2011/Ex. D4, the order passed by Assistant Collector 1st Grade vide which proprietary rights were conferred upon the plaintiffs, was set aside and matter was remanded back to the court of Assistant Collector 1st Grade. Ex. D5 is the certified copy of the judgment dated 13.10.2011 vide which the application moved under section 22 of the Act by the plaintiffs, was finally dismissed because Section 22 of the Act had already been repealed by coming into force of Haryana Land Ceiling Act. Vide judgment Ex.D3 dated 22.12.2010 conditional ejection order was passed against the plaintiffs that if they failed to deposit the rent within the one month, they would be ejected from the suit land.

15. Now the question is whether the plaintiffs can be considered to have been deemed to be an occupancy tenant regarding the suit land. As per explanation 1 attached to the definition of 'occupancy tenants', a person can be deemed to be occupancy tenant at the commencement of President's Act if he is recorded immediately before commencement of President's Act as an occupancy tenant in the latest annual records. However, as per the revenue record, plaintiffs or their ancestors Bhagwana was not shown as occupancy tenant in the revenue record at the time of commencement of the Act of 1954 and therefore, they



cannot claim themselves to be occupancy tenants. Merely on the basis of oral evidence, plaintiffs cannot claim themselves to be occupancy tenants.

16. In order to prove the fact that the plaintiffs and their ancestors are occupancy tenants, plaintiffs had also relied upon documentary evidence. However, as per jamabandi for the year 1962-63, Bhagwana/predecessor in interest of the plaintiffs is shown as gair marusi tenant on payment of 1/3rd batai. Similar entry is shown in jamabandi Ex.P3 and Bhagwana has been shown as gair marusi tenant on payment of 1/3rd batai. Same entry is repeated in the entire revenue record. As such, to the contrary, the voluminous revenue record (Ex.P1 to Ex.P9 - Jamabandis and Ex.P10 to Ex.P22 khasra girdawari) shows the plaintiffs and their predecessor-in-interest Bhagwana as 'Gair Marusi' occupants over the suit estate; which cannot and does not confer full equal ownership upon the plaintiffs; and cannot extinguish the right, title or interest of the defendants in the suit estate. It is also not denied that plaintiffs have admitted themselves to be the Gair Marusi tenant on payment of 1/3rd batai and conditional ejectment order was also passed against them. As such, the plaintiffs are not entitled to get declaration that they have acquired occupancy right under the Act.

17. The Id. Lower Appellate Court vide judgment and decree dated 25.07.2018 also found that as per the revenue record, Bhagwana the predecessor-in-interest was now shown as occupancy tenant at the time of commencement of the Act. And as per the latest revenue



records, at the time of commencement of Act, the plaintiffs are not recorded as occupancy tenant. The plaintiffs can derive no benefit from the documentary evidence/jamabandis as the same only reflects their predecessor-in-interest Bhagwana to be Gair Marusi tenant over the land in question on payment of 1/3rd batai.

18. The relief of injunction was also declined as Ld. Courts below had observed that the plaintiffs are in settled possession as Gair Marusi tenant and have not deposed anywhere that defendants ever tried to interfere in their possession over the suit land.

19. Learned counsel for the plaintiffs is unable to deny or controvert the above said facts and findings.

20. In view of the above facts and findings, no ground is made out that calls for interference in the concurrent findings of the learned Courts below.

21. The present regular second appeal is hereby **dismissed**.

22. Pending applications, if any, stand disposed of.

23.01.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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