

**(2004) 04 P&H CK 0018**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 115 of 1984

Dharam Singh (Deceased) L.Rs.  
and Others

APPELLANT

Vs

Bhagwan Singh and Others

RESPONDENT

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**Date of Decision:** April 16, 2004

**Acts Referred:**

- Punjab Alienation of Land Act, 1900 - Section 6
- Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 - Section 2, 3, 3, 5
- Punjab Security of Land Tenures Act, 1953 - Section 2(8)
- Punjab Tenancy Act, 1887 - Section 24, 28, 4(1), 5, 77

**Citation:** (2005) 139 PLR 639 : (2005) 2 RCR(Civil) 439

**Hon'ble Judges:** Hemant Gupta, J

**Bench:** Single Bench

**Advocate:** G.S. Jaswal, for the Appellant; R.K. Joshi, for the Respondent

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**Judgement**

Hemant Gupta, J.

This judgment shall dispose of Regular Second Appeal No. 2677 of 1983 filed by the plaintiffs and Regular Second Appeal No. 115 of 1984 filed by the defendants arising out of the judgment and decree passed by the learned First Appellate Court dated 30.8.1983.

2. The brief facts out of which the present appeals have arisen are that the plaintiffs have filed a suit for declaration to the effect that the plaintiffs are owners in possession of land measuring 43 Kanals 7 Marlas situated in village Bah Atta and also a decree for permanent injunction as a consequential relief for restraining the defendants from interfering in the possession of the suit land since 1921-22 and they are occupancy tenants over the suit land u/s 5 and 8 of the Punjab Tenancy Act, 1887 (for short "the Tenancy Act") and have become owners of the same u/s 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. It was alleged

that at the time of inception of tenancy there has been promise by the ancestors of the defendants never to eject the plaintiffs and that the proprietors of the village and the ancestors of the defendants have generally and customarily conceded the rights of permanent occupancy to the other tenants in the village Bhahnaur and in the neighbourhood villages. The plaintiffs have continuously occupied the suit land for 30 years and paid rent not exceeding the amount of land revenue. It was further stated that the defendants have now filed a suit for ejectment of the plaintiffs before the revenue Court and, thus, excluded the status of the plaintiffs as owners of the suit land.

3. In reply, the defendants denied that the plaintiffs are occupancy tenants and ever acquired rights of ownership. The suit land is and has been under the ownership of defendants No. 1 to 25. It was denied that the plaintiffs did not pay anything beyond land revenue assessed and even if rent is being paid by the plaintiffs as alleged by the plaintiffs, they are not occupancy tenants over the suit land. Filing of a suit for ejectment was admitted.

4. After filing of the replication, following issues were framed:-

1. Whether this Court has no jurisdiction to try the present suit? OPP

2. whether the plaintiffs are owners in possession of the suit property? OPP

3. Whether the plaintiffs are entitled to the declaration and injunction prayed for? OPP

5. In respect of issue No. 1 pertaining to jurisdiction of the Civil Court, learned trial Court, relying upon a Division Bench decision of this Court in the case of *Amin Lal v. Financial Commissioner (Revenue) Haryana and Ors.* (1972) 74 P.L.R. 96, held that the civil Court has the jurisdiction to entertain the suit of the present kind. However, in respect of issue No. 2, the learned trial Court held that the suit land is Banjar Qadim and that the wood that is grown at the suit land is being put to use by the defendants. It is only the grass which is cut and sold by the plaintiffs from out of the suit land whereas the wooden material grown thereon has consistently been cut and appropriated by the defendants. The defendants have also been mortgaging as well as selling some portion out of the suit land. Thus, the plaintiff are not entitled to the declaration. However, the learned First Appellate Court reversed the findings on issue No. 1 and held that declaration of ownership is a matter which fall within the jurisdiction of the revenue Court but reversed the finding of the trial Court that the plaintiffs are not occupancy tenants. It was held that long and uninterrupted possession by the tenants and their ancestors entitles them to grant of rights as occupancy tenants.

6. In view of the findings of the learned First Appellate Court, the defendants have filed appeal aggrieved against the finding recorded by the learned First Appellate Court on issue No. 2, whereas the plaintiffs have filed appeal aggrieved against the

findings recorded by the learned First Appellate Court on issue No. 1.

7. The following substantial questions of law arises for consideration by this Court:-

1. Whether the Civil Court has the jurisdiction to entertain the suit for declaration of ownership of the plaintiffs on the basis of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953?

2. Whether the plaintiff are occupancy tenants within the meaning of Section 5 of the Punjab Tenancy Act, 1953?

8. Section 8 of the Tenancy Act confers right on a tenant who at the commencement of the said Act has, for more than two generation in the male line of descent, been occupying land for a period of not less than twenty years paying no rent beyond the amount of land revenue thereof as well as upon a tenant who proves that he has been continuously occupying land for thirty years and not paying the rent beyond the amount of land revenue. Section 5 of the Punjab Tenancy Act, 1887 reads as under: -

Section 5:

Tenants having right of occupancy.- (1) A tenant:-

(a) Who at the commencement of this Act has, for more than two generation in the male line of descent through a grand-father or grand uncle and for a period of not less than twenty years, been occupying land paying no rent therefore and the rates and cesses for the time being chargeable thereon, or

(b) Who having owned and having ceased to be land owner therefore otherwise than by forfeiture to the Government or than by any voluntary act, has since he cease to be and owner continuously occupied the land, or

(c) Who, in a village or estate in which he settled along with, or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty first day of October, 1868, and has continuously occupied the land since that date.

(d) Who being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years (sic) has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause.

(e) The landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expenses of the founder.

XXXX XXXX XXXX XXXX

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent thereof beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable it may be presumed that he has fulfilled the condition of Clause (a) of Sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship by the usage of a religious community."

9. Section 77 of the Tenancy Act describes the suits which are required to be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted. Clause (d) of Second Group of Section 77 of the Tenancy Act describes the suits by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right falls within the exclusive jurisdiction of the Revenue Court. The relevant provisions of Section 77 of the Tenancy Act read as under:-

"Section 77: Revenue Courts and suits cognizable by them.-

(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in Sub-section (3), or with respect to a appeal or other proceeding arising out of any suit, he shall be called a Revenue Court.

(2) There shall be the same classes of Revenue Courts as of Revenue officers under this Act, and, in the absence of any order of the State Government to the contrary, a Revenue Officer to any class having jurisdiction within any local limits under this Act shall be a Revenue Court of the same class having jurisdiction within the same local limits.

(3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:

xxxx xxxx xxxx xxxx

First Group:

(a) Suits between landlord and tenant for enhancement or reduction of rent u/s 24.

(b) Suits between landlord and tenant for addition to or abatement of rent u/s 28 or for commutation of rent.

(c) Suits u/s 34 for the determination of rent or other sum on the expiration of the term of an assessment of land revenue and suit relating to the rent to be paid under a mortgage made in accordance with Form (c) as prescribed by Section 6 of the Punjab Alienation of Land Act, 1900.

Second Group:

(d) Suits by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right."

10. However, since 15.6.1952 i.e. appointed day under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, all rights, title or interest of the landlord in the land held under him by an occupancy tenant stands extinguished and such right, title or interest shall be deemed to be vested in the occupancy tenant free from all encumbrances. The occupancy tenant has been defined in Section 2(f) of the said Act to mean a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a Court of competent jurisdiction or otherwise. Section 2(f) and 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 read as under:-

"Section 2(f) "Occupancy tenant" means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a Court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant."

Section 3 : Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.- Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day :-

(a) All rights, title or interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamlat with respect of the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamlat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later.

(b) The landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease.

(c) The occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land.

(d) The occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act."

11. In view of such statutory provisions, the question which is now to be examined is whether the civil Court has the jurisdiction to declare a tenant as occupancy tenant after the commencement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, even though Section 77(3) (d) of the Tenancy Act contemplates that a suit by a tenant to establish a claim to a right to occupancy falls within the exclusive jurisdiction of the Revenue Court.

12. The issue raised is not *res integra*. A Division Bench of this Court in *Amin Lal's* case (*supra*) has held that Section 77(3) (d) of the Punjab Tenancy Act takes out of the jurisdiction of a Civil Court only that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. It was further held that after coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership. When occupancy rights have ceased to exist and statutory ownership created in lieu thereof, a suit for declaration of occupancy rights would be wholly meaningless and, thus, it was held that the Civil Court has the jurisdiction to entertain a suit of declaration of ownership. In Para Nos. 6 and 11 of the judgment, it was held to the following effect:-

"6. The expression "occupancy tenant" includes two types of such tenants, namely, (i) those who were recorded as such in the revenue records immediately before the Act came into force, and (2) those who after the commencement of the Act obtain a right of occupancy in respect of the land held by them in the manner stated therein. Appointed day for those falling in the first category was the 15th June, 1952, and for those obtaining a right of occupancy after that day is the date on which such rights are obtained. Section 3 of the Vesting of Proprietary Rights Act has the effect of extinguishing all rights, title and interest of the landlord on the appointed day and this extinguishment of rights takes effect in both the categories. The result, therefore, is that even if an occupancy right is obtained after the coming into force of the Vesting of Proprietary Rights Act, there is simultaneous extinguishment of that right and conversion of the same into ownership. When occupancy rights have ceased to exist and statutory ownership created in lieu thereof, a suit for declaration of occupancy rights would be wholly meaningless. No tenant claiming to hold occupancy rights of on the commencement of the Vesting of Proprietary Rights Act would go to Court and seek a declaration of those rights when after the operation that had started on 15th June, 1952, he was no longer holding that status and had become the owner....?"

11. Shamsheer Bahadur J. following another Full Bench judgment of the Lahore High Court reported as *Baru v. Niadar* AIR 1942 Lah 217, held in *Tek Singh v. Bur Singh and Ors.* 1961 P.L.J. 64, that Section 77(3)(d) of the Tenancy Act applies only when the nature of tenancy alone is in dispute. The crux of the whole matter thus is that what is to be seen is the real nature of the controversy between the parties. In the instant case, occupancy rights had extinguished on 15th June, 1952, and the plaintiff wanted a declaration in a suit filed 7-8 years thereafter that they had become owners. The relief that the plaintiffs wanted in the Civil Court was not to get a declaration of a status as occupancy tenants but to be declared as owners. The Civil Court had, therefore, in the circumstances of this case, jurisdiction to decide as to whether the plaintiffs were proved to be occupancy tenant or not so as to be declared statutory owners. Revenue Courts cannot consequently proceed with the suits instituted with regard to the same matter has already been finally adjudicated upon by competent Civil Court."

13. The said judgment of the Division Bench has been followed in [Puran Lal Aggarwal and Others Vs. The Financial Commissioner and Others](#), *Dinu v. Nasib Khan and Ors.* 1975 PLJ 316 and *Surinder Kumar v. Shri V.P. Johar*, Financial Commissioner, Haryana and Ors., 2001 (1) PLJ 491, Identical view was taken by the learned Single Judge of this Court in the decision reported as *State of Haryana and Ors. v. Smt. Reshma and Ors.* 1999 (2) PLJ 224.

14. However, contrary view has been taken in few judgments. In *Smt. Kishno and Ors. v. Gurdit Singh and Anr.* 1988 PLJ 222, learned Single Judge of this Court was seized of the dispute where the plaintiffs have sought a declaration that they are occupancy tenants having right of occupancy and with consequential relief to restrain the defendants from interfering with the peaceful possession of the plaintiff. It was held that such suit is within the exclusive jurisdiction of the Revenue Court in view of Section 77(3)(d) of the Punjab Tenancy Act. In the case of [Jiwan Vs. Ram Sarup \(Died\) through his L.R's](#), the plaintiff has sought a declaration that he has become the absolute owner of Khasra Numbers which were in his possession as occupancy tenants. Earlier, the said plaintiff has obtained a declaration of being occupancy tenant from the Revenue Court. Both the judgments referred to by the learned counsel for the defendants are distinguishable and are not applicable to the facts of the present case. In *Kishno's* case (supra), the declaration sought is in respect of occupancy rights and not the declaration claiming ownership over the property. In *Jiwan's* case (supra), the plaintiff has already got a declaration of rights from the Revenue Court.

15. The other judgment referred to by the learned counsel for the defendant is [Omkar Singh Vs. Nirmal](#), wherein the learned Single Judge of this Court has referred to the judgment of the Division Bench of this Court in *Amin Lal's* case (supra) to hold that the Civil Court shall have no jurisdiction and held that whether the plaintiffs were occupancy tenants when Act No. VIII of 1953 came into force is a matter

cognizable by Revenue Court u/s 77(3)(d) of the Punjab Tenancy Act. Such declaration cannot be given by the Civil Court. The said finding of the learned Single Judge runs counter to the judgment of the Division Bench in Amin Lal's case (supra) wherein it has been held that if an occupancy right is obtained after the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, there is simultaneous extinguishment of that right and conversion of the same into ownership. When occupancy rights have ceased to exist and statutory ownership created in lieu thereof, a suit for declaration of occupancy rights would be wholly meaningless. Consequently, in view of the binding precedent of this Court in Division Bench decision of this Court in Amin Lal's case (supra) the judgment rendered by the Single Bench in Omkar Singh's case (supra) does not lay down a correct law.

16. In view of the above discussion, it is held that the suit claiming of title by the plaintiff on the basis of being occupancy tenants is competent before the Civil Court.

17. The revenue record has been produced by the plaintiffs from the year 1922-23 to 1976-77 in the form of Jamabandis Exhibit P1 to P-14. The plaintiff or their predecessor-in-interest have been shown in possession of the property in dispute. In column No. 9, the rate of lease is Rupees three and eight annas i.e. Rs. 3.50 right from the year 1922-23. The land revenue is mentioned only in the jamabandi for the year 1976-77, Exhibit P14, at Rs. 2.52. Still further, land has been described in all the jamabandies as Banjar Qadim.

18. The learned trial Court has found that the plaintiffs were not occupancy tenants as the wood that is grown at the suit land has been put to use by the defendants. Only grass was being cut and sold by the plaintiffs out of the suit land whereas wooden material grown thereon has consistently been cut and appropriated by the defendants who are recorded as its owners. Still, the learned trial Court has held that it cannot be said that the rent of the suit land was not less than the land revenue thereof and the rates and cesses chargeable thereon and consequently dismissed the suit. However, the learned First Appellate Court found that the rate of lease money is Rs. 3.50 per annum and the land revenue payable was Rs. 2.52 half yearly and, thus, the plaintiffs were not even paying lease money equivalent to land revenue. The learned First Appellate Court found that the defendants have never made any effort to eject the plaintiff's or enhance the rate of rent. The rate of rent is nominal which has remained static during the past 50 years although there has been rise in the prices of agricultural produce. Very long and continuous possession has given rise to the presumption that there was an implied promise not to eject. The Court, thus, concluded that where a tenancy has lasted for many years during which period there has been rise in agricultural prices and no effect was made by the landlord to enhance the rent, a strong presumption arises that there was an implied promise not to eject, long and uninterrupted possession by the tenants and their ancestors entitle them to grant of rights as occupancy tenants.



19. A perusal of the documents on the record i.e. jamabandies Exhibit P1 to P13 does not show the amount of land revenue or cesses payable in respect of the land in dispute. It is only the jamabandi for the year 1976-77 wherein land revenue is mentioned as Rs. 2.52. However, it is not mentioned in the jamabandi that it is half yearly or yearly. It could not be pointed out from any document on record or any provision of law that such land revenue is, in fact, payable half yearly. Be that as it may, the fact remains that the land in dispute is described in the revenue record right from the year 1922-23 as Banjar Qadim. Learned counsel for the defendants has argued that in respect of the Ban-jar Qadim land, the plaintiffs are not entitled to claim occupancy rights as it is not a land within the meaning of Section 4(1) of the Punjab Tenancy Act, 1887.

20. A perusal of Section 5 of the Punjab Tenancy Act would show that a tenant can have a right of occupancy if he is occupying the land for thirty years and paid no rent beyond the amount of the land revenue thereof. The land within in the meaning of Section 5 is the one which is defined u/s 4(1) of the Act. Section 4(1) of the Act defines the "land" to mean which has been let for purposes of agriculture or for purposes subservient to agriculture or for pasture.

21. The Punjab Security of Land Tenures Act, 1953 has adopted the definition of land as given in the Punjab Tenancy Act, 1887. The definition of the "land" in Section 4 (1) of the Punjab Tenancy Act, 1887 and in Section 2(8) of the Punjab Security of Land Tenures Act, 1953 read as under:-

Section 4(1) of the Punjab Tenancy Act, 1887:

"Land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agriculture purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land".

Section 2(8) of the Punjab Security of Land Tenures Act, 1953:

"Land" and all other terms used, but not defined in this Act, shall have the same meanings as are assigned to them in the Punjab Tenancy Act, 1887 (Act XVI of 1887).

22. A Division Bench of this Court in the case of Nemi Chand Jain v. The Financial Commissioner, Punjab and Anr. 1963 PLJ 137 has interpreted the provisions of Section 2(8) of the Punjab Security of Land Tenures Act, 1953 and held that the land which is described as Banjar Qadim cannot be treated as land in determining the surplus area of the landowner. It was held as under:-

"According to Section 2(8) of the Punjab Security of Land Tenures at, the word "land" has the same meaning as is assigned to it in the Punjab Tenancy Act. Before land can fall under the definition of the "land" as given in Section 4(1) of the Punjab Tenancy Act, two factors are essential to be proved, (i) that it should not be land which is occupied as the site of any building in a town or village, and (ii) is occupied

or has been let for agricultural purpose or for purpose subservient to agriculture, or for pasture. The fact that the land is banjar jadid or banjar qadim goes to show that it has not been occupied or let for agricultural purposes or for purposes subservient to agriculture. The non-cultivation of land for a number of years goes to show that it does not answer to the definition of the word "land". The definition of the word "land", as given in the Punjab Tenancy Act, looks to the actual state of the land and the use to which it has been put and not to its future potentialities. Therefore, banjar jadid or banjar qadim land cannot be held to answer to the description of "land" as given in the Act."

23. Later, a Full Bench of this Court in the case reported *Rajinder Parshad and Anr. v. The Punjab State and Ors.*, 1966 Punjab Law Journal, 28 has held that the land recorded as "Ghair Mumkin" in revenue records but is not occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, is not land within the meaning of Section 2(8) of the Punjab Security of Land Tenures Act. Hon"ble Supreme Court in the case reported as *Munshi Ram etc. v. The Financial Commissioner, Haryana etc.*, 1979 Punjab Law Journal 182 has held that the land which is described as Bajar Jadid, Banjar Qadim and Ghair Mumkin land does not fall within the purview of land as defined u/s 2(8) of the Punjab Security of Land Tenures Act, 1953, and cannot be taken into account while computing surplus area, approving Division Bench decision of this Court in *Nemi Chand Jain's* case (supra).

24. While considering the definition of word "land" appearing in the Punjab Security of Land Tenures Act, 1953, which is the same as defined in the Punjab Tenancy Act, 1887, it has been held that Banjar Qadim is not a land for determining the land holding in the hands of the landowner. Similarly, while considering the claim of occupancy tenants over a land which is Banjar Qadim, the said judgment would be applicable. There is no evidence that the land was let out for agricultural purposes or for purposes subservient to agriculture. The grass over which the plaintiffs have a right is not shown to be used for pasture as well. Therefore, the subject matter of suit being a Banjar Qadim land is not "a land" within the meaning of Section 4(1) of the Punjab Tenancy Act, 1887, over which the plaintiffs can claim occupancy rights. Since occupancy rights cannot be claimed by the plaintiffs in respect of such land, obviously, the plaintiffs cannot claim a declaration that they are owners of the suit land.

25. Consequently, Regular Second Appeal No. 2617 of 1983 filed by the plaintiffs is dismissed whereas Regular Second Appeal No. 115 of 1984 filed by the defendants is allowed. The judgment and decree passed by the learned First Appellate Court is set aside and that of the learned trial Court is restored dismissing the suit of the plaintiffs with no orders as to costs.