

(1985) 12 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 10 of 1980

Gurdial Singh and Another

APPELLANT

Vs

Sardara Singh and Others

RESPONDENT

Date of Decision: Dec. 20, 1985**Acts Referred:**

- Punjab Tenancy Act, 1887 - Section 5, 6, 77(3)(d), 8, 9

Hon'ble Judges: Rajendra Nath Mittal, J**Bench:** Single Bench**Advocate:** H.L. Sibal and Mr. S.C. Sibal, for the Appellant; Ajmer Singh and Mr. K.S. Grewal, for the Respondent

Judgement

Rajendra Nath Mittal, J.

This Second appeal has been filed by the Plaintiffs against the judgment and decree of the District Judge, Faridkot dated 5th December, 1979.

2. Briefly the facts are that Biru alias Bir Singh son of Dhanna was the owner of the land in dispute. He leased it out to Nidhana and Harnama, real brothers Both of them have died First Harnama died unmarried and his inheritance came to Nidhana Nidhana died leaving the Plaintiffs as his sons The case of the Plaintiffs is that Biru was issueless He left India for a foreign country near about 1940 and never came back Even his whereabouts were unknown. He is thus presumed to be dead. The lease in favour of Nidhana and Harnama was created with a promise that they would never be ejected It is further alleged that in the circumstances of the case Nidhana acquired the occupancy rights u/s 8 of the Punjab Tenancy Act (hereinafter to be referred to as "the Act ") Thereafter Nidhana, on coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1933 (hereinafter called "the 1953 Act") became owner of the land. The Defendants approached the revenue authorities for sanctioning the mutation of the land in their favour alleging that they were the children of Biru's sisters, Smt. Nand Kaur and Smt Chand Kaur The mutation was attested in their favour. Consequently the Plaintiffs filed a suit for

declaration that they were the owners and in possession of the land.

3. The suit was contested by the Defendants who controverted the allegations of the Plaintiffs and inter alia pleaded that they did not become owners of the land. They also denied that the Civil Court had the jurisdiction to try the suit. Some other objections were also raised by the parties but they do not survive in second appeal.

4. The trial Court held that the Plaintiffs were proved to be occupancy tenants u/s 8 of the Act and they became owners by virtue of the 1953 Act. It was further held that the civil court had the jurisdiction to try the suit. Defendant Nos 1 to 5 filed an appeal before the District Judge, Faridkot who held that there was no sufficient evidence to hold that the Plaintiffs had acquired occupancy rights in the land. However, he held that the civil court had jurisdiction to try the suit. Consequently he accepted the appeal and dismissed the suit of the Plaintiffs. They have come up in second appeal to this Court.

5. The two questions that require determination are Whether the Plaintiffs became owners of the land and whether the Civil Court had the jurisdiction to try the suit. On the first question, Shri H. L. Sibal, learned Senior Advocate, has argued that Nidhana and Harnama were not paying "rent more than the land revenue and no attempt was ever made by Biru to increase the rent during the long period in which they remained in possession and consequently, they acquired occupancy rights within the meaning of Section 8 of the Act. After the coming into force of the 1953 Act, Nidhana who had also inherited the rights of Harnama became its owner. In support of his contention, he placed reliance upon *Muni Ram v. Phullia* and *Lalu* 1974 P. L. J. 369

6. I have duly considered the arguments. In order to determine the question as to whether Nidhana became an occupancy tenant, it is necessary to see the provision of the Act. Section 8 is a general section dealing with establishment of right of tenancy. It says that nothing in the earlier sections shall preclude any person from establishing the right of tenancy on any ground other than the grounds specified in those sections. Section 9 provides that no tenant shall acquire a right of occupancy by mere lapse of time. The circumstances in which a tenant can acquire occupancy rights u/s 8 have been the subject matter of judicial interpretation since long. It is not necessary to refer to the large number of cases on the subject, as R. S. Narula, CJ, in *Mani Ram's case* (supra), after noticing various cases, "laid down the following propositions of law to find out, as to whether a tenant has acquired occupancy rights u/s 8 or not:

(1) The intention of the landlord not to eject the tenant for ever should be seen as at the time of the inception of the tenancy. Any subsequent intention cannot ordinarily have any effect on the nature of the agreement which came into existence at the time of the commencement of the tenancy.

(2) Mere length of possession does not entitle a tenant to acquire occupancy right in the land in his possession as a tenant

(3) The intention behind the wide scope left by Section 8 of the Punjab Tenancy Act is:

(a) not to restrict the tenant in any way from establishing his right of occupancy;

(b) to pre suppose the existence of a large set of conditions in which occupancy rights can arise outside the scope of Sections 5 and 6 of the Punjab Tenancy Act.

(4) In cases where circumstances exist from which an inference of an implied promise not to eject a tenant for ever can be raised, the burden of rebutting the said presumption must lie on the landlord, and if the landlord does not discharge that burden, effect should be given to the presumption and the tenant's claim to the occupancy tenancy should be accepted

(6) A very strong presumption of the implied promise not to eject a tenant, and, therefore, of the existence of an occupancy tenancy in favour of such tenant can be raised:

(a) where a tenancy has lasted for many years during which there has been a rise in prices of agricultural produce and it is proved that no effect was made by the landlord to enhance the rent; and

(b) where despite the existence of a stray entry which is inconsistent with the preceding and the subsequent entries over a large number of years, circumstances show that there was no intention to raise the rent or to recover anything for the owner from the tenant.

Shri Sibal has mainly referred to propositions (4) and (5) at he very fairly admitted that the Courts below were right in holding that the Plaintiffs had failed to prove express promise given by Biru that Nidhana and Harnama would not be ejected. It is relevant to point out that in the plaint, the Plaintiffs had pleaded express promise by Biru not to eject Nidhana and Harnama and not an implied promise. They did not aver that the rent of the land remained the same throughout the tenancy and it did not exceed the land revenue payable by the land. By mere lapse of time Nidhana could not become occupancy tenant. At the time of arguments in the Courts below, the case set up by the Plaintiff Appellants was that it had been established from the revenue record that there was an implied promise not to eject the plaintiffs' ancestors. The same argument has been raised by Mr Sibal before me It is, therefore, to be seen whether an implied promise not to eject the Plaintiffs' ancestors has been established from the revenue record or not.

7. From proposition (4) it is clear that, in the first instance, the persons claiming occupancy rights have to prove the circumstances from which an inference can be drawn that there was an implied promise not to eject them from the land for ever

Proposition () is in the nature of an explanation to proposition (4), and it says that a presumption in favour of the tenant arises if the tenancy lasted for many years and during that period, no effort had been made by the landlord to enhance the rent, in spite of the fact that prices of agricultural produce had risen. Proposition (5) will be applicable if it is established that the rate of rent remained the same since the date of inception of the tenancy. Therefore, it is incumbent on the tenant to prove the said fact in the first instance. In order to do so Mr Sibal made reference to jamabandis produced by the Appellants. The earliest jamabandi is of the year 1927-28. Exhibit P 5, in which out of the land measuring 122 bighas 9 biswas Harnama and Nidhana are in possession of 76 bighas 2 biswas and other land is in possession of some other persons. In the column of rent it is said Batai Basharah Khitoni No 1 Jamabandi regarding Khatuni No. 1 has not been produced. In the other jamabandis Harnama and Nidhana came in possession of whole of the land. The land in dispute has been allotted after consolidation in lieu of 122 bighas 9 biswas. The relevant entries regarding rent in other jamabandis are as follows:

Sr. No.	Year of Jamabandi	Exhibit	Entries in the column of rent.	Remarks
1.	1931-32	P. 6	Chakota Shamil Khata No 4.	Entry of Khata No 4 not produced.
2.	1935-36	P. 7	Lagan Shamil Khitoni No 8	Khitoni No. 8 not produced.
3	1939-40	P. 8	Abiana Nehri Salim Lagan Shamil Khitoni No. 9	Khitoni No. 9 not produced
4.	1943-44	P. 9	Shamil Khitoni No. 5	Khitoni No. 5 not produced.
5.	1954-55	P. 10	Bila Lagan Bawaja Rishte-dari	-- -
6.	1961-62	P 11	-do-	----

The Jamabandis of the subsequent years have not been produced. However, Khasra Girdawaris from Kharif, 1962 to Rabi 1967, Ex. P 15 and Karif 1967 to Rani 1972, Ex P. 16 have been produced. The Appellants have also produced Khasra Girdawari relating to Kharif 1960 to Rabi 1962, Ex P 14. In the Khara Girdawaris, there is no specific column of rent. However, the rent is mentioned in the column where the name of the tenant is given. In the Khasra Girdawari relating to 1960 to 1962, Ex P 14, the rent is mentioned as, "Bila Lagan Baweja Rishtedari". However, in the subsequent Khasra Girdawaris Ex. P 15 and P 16, the rent is mentioned as "Khata No. 44." That means the rent, according to Khata No. 44. The entry in the Khasra Girdawari Ex P 14 is reflected in the Jamabandi Ex. P 11. It is well settled that if there is any stray entry which is inconsistent with the preceding and subsequent entries over a large number of years, the stray entries can be ignored. From the aforesaid entries in the Jamabandi and the Khasra Girdawaris, it is clear that the Plaintiffs have failed to prove as to what rent Harnama and Nidhana had been paying to the landlord. As already mentioned above, it was for them to show that the rent which was being paid by Harnama and Nidhana remained the same, throughout the period they cultivated. They have, therefore, failed to show that the rent which was paid by Harnama, etc. to the landowners, remained the same from the date of lease till the time of their death.

8. It is true that Biru left the country somewhere in the year or there about. However, he had appointed Nidhan Singh son of Dhara Singh, resident of Manian and Basant Singh son of Hira Singh, resident of Kasur, District Ludhiana, his brother-in-law, as his attorneys vide Power-of-Attorney DX. It appears that after Biru left India, his attorneys were managing the properties. A contention has been raised that the name of the father of Nidhana has been wrongly mentioned as Dhera. On the other hand, he is the same person who had been given the property on lease. The contention does not appear to be correct. The pedigree table relating to the year 1911-12, Ex D 4 has been produced in which Nidhana has been shown to be the son of Dhera. The name of the father of Nidhana to whom the land was given on lease is Atra (see pedigree-table Ex. D4). It is thus evident that there were two persons by the name of Nidhana in the village. Consequently, this contention has no substance. In case the Plaintiffs have failed to show that Nidhana and Harnama paid throughout the same amount of rent, it cannot be said that there was an implied agreement between Biru and the said tenants that they will never be ejected. It is further relevant to point out that there is no evidence on the record that the rent payable by Harnama and Nidhana was approximately the same as was the amount of land revenue. After taking into consideration all the above said circumstances, I am of the view that the Plaintiffs have failed to show that they have acquired right of occupancy in the land.

9. The second question is whether the civil court had the jurisdiction to try the suit. The relief claimed by the Appellants is of declaration to the effect that they were owners and in possession of the land and not that they acquired right of occupancy

therein. Mr. Ajmer Singh has argued that in the first instance it is to be found out whether Nidhana had acquired the rights of occupancy or not and to determine that question, the revenue courts u/s 77(3)(d) of the Punjab Tenancy Act have got the jurisdiction. It is true that in order to hold that Nidhana had become owner of the property, a finding is to be returned whether he had become an occupancy tenant or not. However, primary issue is whether Nidhana had become owner of the property or not. It is well settled that the question of title can be determined by the civil court and that if in order to determine such question an ancillary question which is determinable by the revenue court has to be decided, the matter still remains within the competence of the civil court. In the above view I am fortified by the observations of a Division Bench in *Amin Lal v. Financial Commissioner (Revenue) Haryana* (1972) 74 P.L.R. 96, wherein a similar question arose. It was held by the Bench that a suit in which the right to property was to be decided was a suit within the cognizance of a civil court. Section 77(3)(d) of the Punjab Tenancy Act takes out of the jurisdiction of the civil court only that suit which is instituted to establish the claim to a right of occupancy and not where the title to the property is to be decided on determination of occupancy rights which determination was only to substantiate the plea of ownership. Therefore, in my view, the civil court had the jurisdiction to try the suit.

10. For the aforesaid reasons I do not find any merit in the appeal and dismiss the same with no order as to costs.