

Sri Chand

Vs

Inder and Others

Civil Appeal No. 3669 of 1984

(S. Mohan, G. N. Ray JJ)

15.05.1992

JUDGMENT

G. N. RAY, J. –

1. This appeal is directed against the judgment and decree dated March 14, 1984 passed by the High Court of Punjab & Haryana in the Civil Regular Second Appeal No. 319 of 1979. The aforesaid Regular Second Appeal No. 319 of 1979 arose out of Civil Appeal No. 96 of 1978/1975 of the Court of Additional District Judge, Gurgaon which arose out of the judgment and decree passed by the Subordinate Judge, First Class, Gurgaon in Civil Suit No. 81 of 1973. The appellant, Sri Chand, was the plaintiff in the said Title Suit No. 81 of 1973 instituted against the respondents being defendant 1 Inder, defendant 2, Smt Bidya, defendant 3, Gram Panchayat of Village Kalwaka, for a declaration in respect of some agricultural lands referred to in the schedule to the plaint or in the alternative a decree for joint possession in respect of the said lands. The plaintiff contended that the suit properties were held by one Shri Narain, maternal grandfather of the plaintiff in occupancy tenancy. The plaintiff is the son of the predeceased daughter of Narain, namely, Sohna and defendant 1 is the husband of the other daughter of Narain, namely, Smt Bidya, defendant 2. It is the case of plaintiff that the said Narain had died some time before 1956 and on his death his widow, Smt Bhagwani, held the said lands in occupancy tenancy and after the death of said Bhagwani some time in 1972, the occupancy tenancy being heritable had devolved on defendant 2 and the plaintiff who are the sole heirs and legal representatives of the deceased Bhagwani. As defendant 2, Bidya and her husband, Inder, defendant 1, had attempted to grab the said property by obtaining a declaration of their occupancy tenancy from the Assistant Collector, Grade I, Palwal, the aforesaid title suit had to be instituted for the declaration and/or for joint possession of the disputed property. Such suit was contested by defendants 1 and 2. Defendant 3, Gram Panchayat, however, did not appear and contest the suit. Defendants 1 and 2 had contended that Narain was only a tenant at will in respect of the disputed property and he had died some time in 1943-44 and on his death tenancy came to an end. Thereafter, the proprietors of the lands had given tenancy to the widow of Narain namely, Smt Bhagwani on the same terms and conditions. Such fresh tenancy of Bhagwani continued but Bhagwani did not carry on the cultivation and defendants obtained a fresh tenancy from the proprietors during the lifetime of Bhagwani and carried on cultivation in the disputed lands and their rights were recorded in Girdawari Entries in the record of rights (Ex. P-10). As the defendants from the time of their predecessor-in-interest had continued possession of the said lands, they made an application for declaration of occupancy tenancy under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as the Occupancy Tenants Act) before the Assistant Collector, Grade I, Palwal. Such proceeding was contested by the Gram Panchayat but the Assistant Collector held inter alia that the said defendants 1 and 2 having fulfilled all the conditions under Section 5 of the Occupancy Tenants Act, they were

entitled to get a declaration of occupancy tenancy rights in respect of the disputed lands. The defendants also contended that the interest of Bhagwani not being that of an occupancy tenant, was not heritable. The defendants also contended that the mother of the plaintiff, Sohna, was not the other daughter of Narain and of Bhagwani and as such there was no question of inheriting the interest of Bhagwani even if any. After a contested hearing the trial court held inter alia that the plaintiff was the daughter of Sohna who was a predeceased daughter of Narain but the tenancy rights of Narain not being heritable, Bhagwani did not inherit such tenancy but she was given a fresh tenancy on the same terms and conditions by the proprietors after Narain's death. The defendants, however, cultivated the disputed lands in their own right during the lifetime of Bhagwani and by that process they had been holding the same like subtenants and such fact of possession was reflected in Khasra Girdawari Entries (Ex. P-10). The trial court also held that after the death of Bhagwani the defendants acquired occupancy tenancy rights under the Gram Panchayat in terms of the adjudication made by the Assistant Collector, Grade I. In that view of the matter the suit was dismissed by the trial court. The plaintiff thereafter preferred an appeal being Civil Appeal No. 96 of 1978/1975 in the Court of Additional District Judge, Gurgaon. The court of appeal below, however, held inter alia that Bhagwani got occupancy rights in respect of the said land although she did not get any declaration to that effect by the competent authority. The learned Additional District Judge also held inter alia that Narain and thereafter his widow, Bhagwani, had continuously possessed the same and it was only because of such continuous possession, the right to get declaration as occupancy tenants had arisen. Singh the possession of defendant 2, Bidya, a co-share of the plaintiff was also a possession of the other co-share and since the plaintiff was entitled to get the benefit of declaration of occupancy tenant obtained by his co-share, namely, Bidya. The plaintiff was entitled to get the declaration of joint tenancy as prayed for in the suit. In that view of the matter, he reversed the judgment and decree of the trial court and decreed the suit. Defendants 1 and 2 thereafter preferred the said Regular Second Appeal No. 319 of 1979 in the High Court of Punjab and Haryana and such appeal was disposed of by the High Court on October 14, 1984. The High Court set aside the judgment and decree of the court of appeal below and dismissed the suit inter alia on the finding that Bhagwani did not hold the land as occupancy tenant and she also did not get any declaration of such right from the competent authority under the Occupancy Tenants Act. It was also held by the High Court that since the interest of Bhagwani was not recorded as occupancy tenant before coming into force of the said Occupancy Tenants Act and as subsequently the said Bhagwani did not get any declaration of such right, she could not have the right of occupancy tenant and as such there was no occasion for the plaintiff to inherit the same. The High Court also held that defendants 1 and 2 cultivated the said land by exercising the rights as subtenant and they had also got the declaration from the competent authority about their occupancy tenancy rights. Accordingly, the suit for the plaintiff was liable to be dismissed.

2. Mr. Sushil Kumar Jain, learned counsel appearing for the appellant, has contended that in the Punjab Tenancy Act, 1887, 'occupancy tenant' has not been defined. The word 'tenant' has, however, been defined in Sections 4(5) and 4(7) of the Act. In Section 5 under Chapter II, it has however been indicated how a tenant under the said Act may have the right of occupancy without defining occupancy tenant. Mr. Jain has contended that even if it is assumed that Narain and thereafter Bhagwani was tenant at will, they had owned and occupied such tenancy for about was 30 years and they had not paid any rent for the tenancy beyond the amount of the land revenue and the rates of cess for the time being chargeable. Accordingly, Bhagwani was entitled to be treated as a tenant having right of occupancy under Section 5(2) of the Punjab Tenancy Act. He had contended that although the plaintiff has not obtained a declaration from the competent authority under the said Occupancy Tenancy Act, defendant 2, the other co-sharer of the plaintiff having obtained such

declaration, the same must enure to the benefit of the plaintiff. He has also contended that mere possession of the land and cultivation of the same by defendants 1 and 2 do not disentitle the plaintiff to get the decree for joint possession or for declaration of half share in the tenancy right because possession of one co-sharer must be held to be the possession of other co-sharer unless other co-sharer can establish by cogent evidence that he had exercised the possession of the same by the ouster of his co-sharer. Since such case has not been established, the possession of defendants 1 and 2 must be held to be possession of the plaintiff. The learned counsel has also contended that Section 2(f) of the Occupancy Tenancy Act provides for that 'occupancy tenant' will also include a tenant who after the commencement of the said Act obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a declaration of such right by a court of competent jurisdiction or otherwise He has contended that the said expression 'otherwise' has a legal implication. The case of the plaintiff has not been accepted by the High Court on the ground that Bhagwani after the commencement of said Tenancy Act did not obtain a right of tenancy in respect of the land held by her either by agreement with the landlord or through a declaration of such right by a court of competent jurisdiction. Mr. Jain has submitted that the High Court failed to note the implication of the expression 'otherwise' appearing in Section 2(f) because even apart from the aforesaid two conditions referred to in Section 2(f), the tenant may be held as an occupancy tenant for reasons other than the aforesaid reasons. In this connection, he had referred to a decision of this Court in *Lilavati v. State of Bombay* (1957 SCR 721 : AIR 1957 SC 521). This Court has noted that the expression 'or otherwise' appearing in Explanation 'A' of Section 6 of Bombay Land Acquisition Act and has indicated when the rule of *eiusdem generis* is to be applied. It has been held that the expression 'or otherwise' has not been used as *eiusdem generis*. It has been indicated that the legislature, when it uses the word 'or otherwise' apparently intends to cover other cases which may not come within the meaning of provided clauses. Mr. Jain has, therefore, contended that simply because Bhagwani was not recorded as an occupancy tenant immediately before the commencement of Occupancy Tenants Act or after the commencement of the said Act she did not obtain a right of occupancy by agreement with the landlord or the virtue of declaration by a court of competent jurisdiction, it cannot be said that she was not occupancy tenant under the said Act. He has contended that since Bhagwani had fulfilled all the conditions to obtain a right of occupancy tenant in respect of a disputed land under the provisions of the Punjab Tenancy Act, the High Court has erred in not holding that Bhagwani had occupancy tenancy right in the lands in question and such right has been inherited by the plaintiff along with defendant 2. Mr. Jain has, therefore, contended that the impugned decision of the High Court should be set aside and the suit should be decreed by upholding the decision of the lower appellate court.

3. Mrs Chhabra, learned counsel appearing for the respondents, however, disputed the said contentions of Mr. Jain and has contended that the plaintiff had the burden of proving the occupancy tenancy right of Bhagwani and plaintiff had failed to establish such occupancy tenancy right of Bhagwani, for any reason whatsoever as sought to be contended by Mr. Jain. The suit of the plaintiff was therefore bound to fail and the High Court was right in dismissing the suit.

4. After considering the respective contentions of the learned counsel for the parties, it appears to us that it has not been established by the plaintiff that at the inception of the tenancy in favour of Narain a right of an occupancy tenant was given by the landlord. In the record of rights, such occupancy tenancy has not been recorded for over a long stretch of time either in favour of Narain or in favour of Bhagwani. Even if it is assumed, that Bhagwani could acquire occupancy tenancy right under the provisions of Punjab Tenancy Act, the plaintiff has failed to establish by any cogent evidence that Bhagwani had in fact acquired such occupancy tenancy right under Section 5(2) of the Punjab Tenancy Act. Admittedly Bhagwani had not got any declaration of occupancy tenancy right

under the Occupancy Tenants Act and it has not been established for how many years actually Bhagwani had occupied and cultivated the said land and when she had fulfilled the conditions for getting the status of an occupancy tenant. On the contrary, it appears that the defendants had possessed and cultivated the said land even during the life time of Bhagwani and such fact is reflected in Girdawari records (Ex. P-10). It is not necessary to investigate as to whether or not the defendants had lawfully acquired any subtenancy right under Bhagwani because even if it is held that the defendants had not acquired such subtenancy right, the weakness of the defendants' case, cannot strengthen the case of the plaintiff who must succeed by establishing his own case. It is an admitted position that the defendants obtained the declaration as occupancy tenants by a competent court under the Occupancy Tenants Act and admittedly, the defendants have been occupying and cultivating the disputed land.

5. In the aforesaid circumstances, we do not find any reason to interfere with the decree of dismissal of the suit of the plaintiff. This appeal, therefore fails and is dismissed but in the facts of the case, we make no order as to costs.

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