

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

RSA-2439-2018 (O&M)

Reserved on :- 12.01.2026

Date of Pronouncement:-22.01.2026

Uploaded on:-23.01.2026

Om Parkash and Others

... Appellants

Versus

Har Pal Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Rajinder Goel, Advocate;
Mr. Navjot Singh, Advocate and
Ms. Anavi, Advocate
for the appellants.

Mr. Abhimanyu Singh, Advocate
for the caveators/respondents.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) has been preferred by the appellants/plaintiffs assailing the concurrent judgments and decrees rendered by the learned Courts below, on the grounds that such findings are vitiated by errors of law, misappreciation of evidence, and manifest legal infirmities warranting interference by this Court in the exercise of its appellate jurisdiction.

2. Briefly stated, the appellants–plaintiffs instituted the present suit seeking a declaratory decree, accompanied by consequential relief of permanent injunction, contending that the defendants have been wrongly



recorded as co-owners of the suit land as fully detailed in the plaint. It is asserted that the appellants–plaintiffs have been in actual, uninterrupted, and physical possession of the suit land since the time of their forefathers, in the capacity of ‘Gair Marusi’ occupants, without paying any rent or consideration to any person other than the Government. The suit, therefore, seeks to declare the appellants–plaintiffs as rightful owners and to restrain the defendants from asserting any alienable rights or creating encumbrances over the suit land.

3. The plaintiffs further contended that they acquired rights as occupancy tenants from their uncle, Fakira, pursuant to Mutation No. 6304, sanctioned on 04.02.1981, who, prior thereto, was in cultivating possession of the suit land as a ‘*Gair Marusi*’ occupant. It is asserted that the plaintiffs have been in uninterrupted possession of the suit land for over three decades, thereby acquiring ownership rights under the law. Consequently, the entries recorded in the revenue records in favour of the defendants, showing them as owners of the suit land, are alleged to be illegal, null, and void. The plaintiffs also seek consequential relief in the form of a permanent injunction restraining the defendants from alienating, encumbering, or creating any third-party rights over the suit land.

4. The suit was vigorously contested by the defendants, who denied the plaintiffs’ claim to any right, title, or interest in the suit land, asserting that they themselves are the exclusive owners in actual possession thereof. It was further pleaded that Fakira, from whom the plaintiffs claimed occupancy rights, died issue-less in the year 1980. Consequently, it was submitted that Fakira’s tenancy rights as a ‘*Gair Marusi*’ occupant stood extinguished upon his death, and the suit land reverted to the original



owners. The defendants further asserted that they have been in uninterrupted possession of the suit land since that time.

5. Upon a careful and exhaustive examination of the pleadings of the parties, coupled with a meticulous appraisal of their respective contentions, Court found it necessary to crystallize the precise points of divergence between the parties. In order to facilitate a structured, focused, and legally coherent adjudication of the dispute, the Court, in exercise of its judicial discretion, was pleased to frame the following issues for determination:-

- (i) Whether the plaintiffs are entitled for a decree of declaration as prayed for? OPP
- (ii) Whether the plaintiffs are entitled for a decree of permanent injunction as prayed for? OPD
- (iii) Whether the suit of the plaintiff is not maintainable?OPD
- (iv) Whether the plaintiff has no cause of action to file the present suit? OPD
- (v) Whether the plaintiff has no locus standi to file the present suit? OPD
- (vi) Whether the plaintiffs are estopped from filing the present suit by their own act, conduct and admissions? OPD
- (vii) Whether the suit of the plaintiffs are bad for non-joinder and mis-joinder for the necessary party?OPD
- (viii) Whether the plaintiffs or their forefather have never remained in possession of the suit land at any point of time?OPD
- (ix) Relief

6. Following the framing of issues, both parties were afforded a full and fair opportunity to adduce their respective oral and documentary evidence. Upon a comprehensive and meticulous appraisal of the entire evidentiary record, coupled with careful consideration of the submissions advanced by the parties, the learned Civil Judge proceeded to dismiss the suit. Thereafter, the appellants preferred an appeal before the learned



Additional District Judge, Mewat, which, upon reappraisal of the record and arguments, was also dismissed, thereby affirming the findings of the trial Court in their entirety.

7. The appellants have invoked the jurisdiction of this Court by way of the present RSA. Upon a preliminary and prima-facie examination of the appeal, it was observed that the matter raises substantial and arguable questions of law and fact, thereby justifying admission for regular hearing. In pursuance thereof, notice was duly issued to the caveator/respondents, who entered appearance through their learned counsel and have actively contested and opposed the appeal at the stage of final arguments.

8. In order to ensure a thorough, just, and legally coherent adjudication of the questions arising in the present appeal, the entire record of the Courts below was duly summoned and placed before this Court for meticulous examination, critical appraisal, and careful consideration.

9. I have heard learned counsel for the parties at length and have given my thoughtful, anxious, and deliberate consideration to the submissions advanced, in the backdrop of the pleadings of the parties, the entire corpus of evidence adduced, and the concurrent findings returned by both Courts below. The lower Court record has been examined with meticulous care and in its entirety, for the purpose of assessing '*whether the impugned judgments and decrees suffer from any jurisdictional infirmity, patent illegality, manifest perversity, or mis-appreciation of evidence such as would warrant interference by this Court in the exercise of its appellate jurisdiction?*

10. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are



to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157*, followed by the judgments in the case of *Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317* and *Satender and others V/s Saroj and others, 2022(12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

11. Learned counsel for the appellants contends that both the Courts below failed to appreciate and duly consider that the plaintiffs have been in continuous, actual, and cultivating possession of the suit land since the time of their forefathers, without payment of any rent or dues, except for the statutory land revenue and cess payable to the Government. It is further submitted that Fakira, the uncle of the plaintiffs, was in possession of the land, which was duly recorded in the revenue records as '*Billa Lagan Bawajah Darina Kasht*'. Both Courts, it is urged, committed a grave error by overlooking the fact that the plaintiffs have acquired occupancy rights under the law. Consequently, it is prayed that the impugned judgments and decrees be set aside and that the appeal preferred by the appellants be allowed.

12. Whereas learned counsel for the respondent contends that the judgments of the Courts below are unimpeachable and devoid of any illegality or infirmity, it is submitted that the learned Courts below have rightly concluded that the appellants, having claimed themselves to be '*Gair Marusies*', could never assume the status of occupancy tenants and, therefore, cannot be entitled to the rights and privileges conferred upon occupancy tenants under the law.

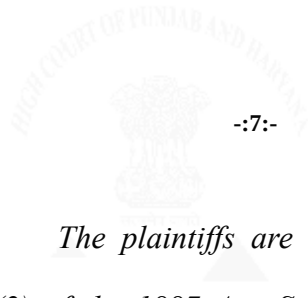


13. This Court, in its judgment rendered in ***Ram Kishan and Others vs. Jagdish and Others, Neutral Citation No.: 2018:PHHC:02139***, has held and observed as follows:

“The plaintiffs in the jamabandi for the year 1963-64 are recorded in the cultivation column as Gair Marusi. The literal meaning of Gair Marusi is known as non-occupancy. In the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT. Thereafter as per jamabandi for the year 1968-69 in the rent column, it is recorded as BILLA LAGAN BAWAJAH DARINA KASHT which continues up to the year 2003-2004. The literal meaning of words BILLA LAGAN BAWAJAH DARINA KASHT is that the persons are proclaiming to be owners by reason of being in the cultivating possession since long.

As noticed earlier, the meaning of word Gair Marusi is non occupancy. In view of these entries, the plaintiffs are not even proved to be tenant on the land. The word Gair Marusi itself does not imply that the person in occupation is a tenant. For arriving at conclusion whether a person is tenant or not, the entry in the column of rent has to be carefully read in conjunction with the entry in cultivation column. In the present case, the entry in the rent column does not show that the plaintiffs were in possession as a tenant under the land owners.

*This Court has already considered the word Gair Marusi and has held that a person, who is recorded as Gair Marusi, can never claim rights of occupancy tenant. Reference in this regard can be made to the judgment passed by this Court on 26.10.2017 in ***RSA No.5685 of 2014 (Tara Chand Vs. Bihari Lal and others)***. This Court has in turn relied upon a judgment passed by the learned Single Judge of this Court in ***Jaleb Khan and others Vs. Commissioner, Gurgaon Division, Gurgaon and others, 2010 (1) PLR 111***.*



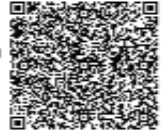
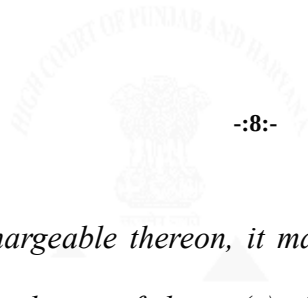
The plaintiffs are claiming the right of occupancy under Section 5(2) of the 1887 Act. Section 5 of the 1887 Act is extracted as under:-

“5. Tenants having right of occupancy - (1) 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 twenty years, been occupying land paying no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon; or (b) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has since ceased to be land-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; or

(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, has a right of occupancy in the land so occupied unless, in the case of a tenant belonging to the class specified in the clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land-revenue thereof and the rates and cesses for the time being



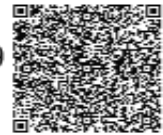
chargeable thereon, it may be presumed that he had fulfilled the conditions of clause (a) of sub-section (1).

(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.” A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act. Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly construed. In the present case, the plaintiffs are not even proved to be tenant. Hence, they are not entitled to declaration as prayed for. ”

A reading of sub section 2 of Section 5 of the 1887 Act requires that before a tenant claim right of occupancy, he has to be a tenant who has continuously occupied the land for 30 years apart from fulfilling other requirements. In the present case, the plaintiffs are not proved to be a tenant over the land tenant, therefore, they are not entitled to claim any right under Section 5(2) of the 1887 Act.

Still further, the 1952 Act provides for vesting of proprietary rights in the occupancy tenant and extinguishment of corresponding rights of landlord. Such statute which takes away ownership has to be strictly construed.”

14. In the present case, the plaintiffs themselves claim to be in possession as ‘Gair Marusi’. The earliest Jamabandi entry on record for the



year 1955-56 (Ex.P19) clearly reflects that Fakira, the predecessor of the plaintiffs, was in possession as “*Gair Marusi Darina Kasht*,” and such entries consistently continued until his demise. The revenue records, including Ex.P1 to Ex.P9 and Ex.P19, uniformly confirm the status of the plaintiffs’ predecessors as ‘*Gair Marusi Darina Kasht*’. In view of the above, it is evident that neither the plaintiffs nor their predecessors held the status of occupancy tenants over the suit land. Consequently, there is no legal basis for the plaintiffs to claim ownership rights on the ground of continuous possession as occupancy tenants for over thirty years. Accordingly, the appeal is found devoid of merit and is hereby dismissed, and the judgments and decrees of the Courts below are affirmed in their entirety.

15. In view of the fact that the principal appeal has now been conclusively adjudicated and stands finally disposed of on its merits, all ancillary, interlocutory, or pending application(s), if any, subsisting on the record shall, by necessary implication, stand disposed of. In light of the conclusions reached herein, no separate or independent orders are required in respect of such applications, as their continuance has been rendered wholly otiose and their determination purely academic.

22.01.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No