
(2001) 07 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 104 of 2000

Arjan Singh

APPELLANT

Vs

Bhupinder Chand

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Citation : (2002) 2 LJR 659 : (2002) 1 PLJ 275 : (2002) 2 RCR(Civil) 162

Hon'ble Judges : I.S.Bindra, FC.

Advocate : Mr. S.K. Mahajan, Advocate, Mr. G.S. Nagra, Advocate., Advocates for appearing Parties

Judgement

I.S. Bindra, FC.

1. This is a revision petition under Section 24 of the Punjab Security of Land Tenures Act, 1953 read with Section 84 of the Punjab Tenancy Act, 1887 against the order dated 29.11.1999 of the Commissioner (Appeals), Jalandhar Division, whereby appeal of the petitioners challenging order dated 29.5.1997 of the Collector, Amritsar who had set aside the order dated 29.1.1997 of the Assistant Collector 2nd Grade, Amritsar, was dismissed. The Assistant Collector 2nd Grade had accepted the application filed by the petitioners under Section 14A(iii) of the Punjab Security of Land Tenures Act, 1953 for deposit of rent @ 400/ per annum for the years 199293, 199394 and 199495 in respect of the land in dispute measuring 35K15M7S situate in Amritsar Urban 107 (Abandi Bagh Ramanand). The Collector set aside the order of the Assistant Collector 2nd Grade, holding that the petitioners are not the tenants on the land in dispute and they were the licensee by virtue of an agreement dated 10.6.1991 for plucking the fruits from the already planted trees only and that the Civil Judge (Jr. Div.), Amritsar had also held vide order dated 4.1.1997 that the petitioners are not the tenants.

2. Shri G.S. Nagra, learned counsel for the petitioners contended that the Assistant Collector 2nd Grade had rightly allowed the application of the petitioners after thoroughly examining and considering the undisputed entries in the Jamabandi and Khasra girdawari of the relevant period. He pointed out that

the petitioners and earlier to them their forefathers had been tenants on the land in dispute since decades on payment of rent @ 400/ per annum and the theka @ Rs. 600/ per annum was being paid in respect of the fruitbearing trees in addition to the rent for cultivation of the land in dispute. Attacking the view of the Commissioner and Collector regarding order of the civil Court, he asserted that it was only an injunction suit. He referred to Jamabandi for the year 195758 and contended that their grandfather Lalji and their father Mahan Singh are recorded as cultivators of the land in dispute and since then the land has been continuing under their possession or under possession of the petitioners. The agreement relied upon by the Collector does not relate to the relationship of landowner and tenant. Arguments furnished in writing by learned counsel for the respondents are as under :

1. That the Collector and Commissioner (Appeals) have recorded concurrent findings of fact based on appreciation of evidence produced by the parties that there is no relationship of landlord and tenant between the parties. The findings of the Collector and Commissioner are based on the agreement dated 10.6.1991 which has been duly admitted by the petitioner Arjan Singh in his statement and the order dated 4.1.1997 passed by the Civil Court. No case for interference in this Revisional Jurisdiction with the concurrent findings of fact recorded by the two courts below based on appreciation of the evidence, is made out and the revision petition is liable to be dismissed on this ground.

2. That it has been established on record that vide Agreement dated 10.6.1991 which have been reproduced by the Commissioner in his order are reproduced for ready reference of this Hon"ble Court :

"4. We shall have no right over the land underneath the trees."

"7. We shall have no right to raise any construction and we shall also leave no place for grazing cattles etc."

It is thus clear that the petitioners were never inducted as tenants over the land in dispute, but have only been given the licence for plucking the fruits from orchard trees. The contract for plucking the trees was granted from year to year and the petitioners have even no right to pluck the fruit from the trees after expiry of period of licence. There is a clear mention in the Receipts Ex.A1, A2 and A3 at pages 41, 43, 45 that theka amount for the garden is received from the petitioner. These documents thus clearly prove that the petitioners never inducted as licensee over the land in dispute.

3. That the civil Court in the order dated 4.1.1997 has clearly held that there is no relationship of landlord and tenant between the parties and the petitioners are in unauthorized possession of the land. The civil Court further held that entries in the jamabandis are to be read alongwith the agreements regarding plucking of fruit trees and these licence deeds will prove that there is no relationship of landlord and tenant. Para 7 of the order dated 4.1.1997 passed by the court of Shri Ravinder Kumar, Civil Judge, Junior Division, Amritsar, in Civil Suit filed by

the petitioner between the parties reads as under :

"7. The plaintiff claims to be in possession of the suit property and has averred that the suit property is a wakf property and that they have been depositing the rent @ Rs. 400/ per year from 1954 upto this date. Jamabandi for the year 1990/91 placed on the record in column No. 5 shows the possession of S. Maharaj Chand, Jagjit Chand through Mahan Singh son of Lalji Par Giarmarusi, Amritsar. Documents placed on the file by the defendant go to show that father of the plaintiffs took the land for plucking fruit from the trees planted in the suit land through licence deeds from year to year. Though presumption of truth is attached to the entries in Jamabandi but when there is specific documents relating to the entries in the Jamabandi then the nature of the documents on the basis of which entries in the jamabandi appeared are to be taken into consideration and in the present case, the nature of possession of the plaintiff over the suit land is evident from various licence deeds placed on the record by the defendant. As per those licence deeds, father and forefathers of the plaintiffs remained in possession of the suit property as licensee from year to year and not as tenants. Since as per the version of the defendant last such licence was executed for a period of one year from 1.4.1991 to 21.3.92 on 10.9.91. Therefore, the possession of the plaintiff over the suit property after the lapse of said licenced period become unlawful."

In view of the findings of the Civil Court, the two courts below were justified in holding that there is no relationship of landlord and tenant between the parties.

4. That the matter is already subjudiced before the civil Court in the civil suit filed by the petitioners and the civil Court has already held that there is no relationships of landlord and tenant between the parties. A copy of order dated 1.4.97 passed by the civil Court is on the record of the Assistant Collector at page 51. In view of the matter pending before the Civil Court, the present petition is liable to be dismissed.

5. That it has also been established on the record that the petitioners filed application earlier on 9.10.95 which has been dismissed on 27.12.95. In view of the dismissal of the earlier application for same relief, the present application was not maintainable in law.

6. I have examined the record and considered the matter carefully. The sole point involved in this case is whether or not the petitioners are the tenants over the land in dispute. Facts are not disputed. The Assistant Collector 2nd Grade held them to be the tenants while the Collector as well as the Commissioner held them not. The Assistant Collector 2nd Grade relied upon the entries in the Jamabandi and Khasra girdawari for the relevant period, according to which the rent is Rs. 400/ per annum. The respondents have not disputed those entries. The Collector and Commissioner relied upon item Nos. 4 and 7 of the agreement dated 10.6.1991 as well as on the order dated 4.1.1997 of the Civil Court. According to the said agreement, the amount payable by the petitioners is fixed

at Rs. 600/, which tends to mean that this amount is different from the amount of rent @ Rs. 400/. Also, item No. 5 of the said agreement which appears to have not been noticed by the Collector and the Commissioner reads as "Godi saade zimme hovegi te jis da koi muavza malkan ton mangan de haqdar nahin hovange". "Godi" is a sort/part of cultivation. The order dated 4.1.1997 of the Civil Judge, Junior Division was appealed against and that appeal was been decided on 6.2.2001 by the Additional District Judge, Amritsar. Vide order dated 4.1.1997, an application filed by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure for restraining the respondents from taking possession of the land in dispute by force and methods other than due process of law was partly accepted and partly dismissed. The petitioners filed the appeal in so far as their application was dismissed. While deciding that appeal, the Additional District Judge, Amritsar observed that it is made clear that anything observed in his order shall not be construed as expression of opinion on the merit of the case. Thus there is no conclusive finding of the civil court that the petitioners are not the tenants. Only a prima facie view is formed on such like applications for interim relief and such a view does not have any bearing while deciding the case conclusively. The Additional District Judge has also made observation to this effect. Thus the prima facie view formed by the civil Court could not be taken for a conclusive finding and the case in hand had to decided on its own merits. Viewed either on the basis of entries in the Jamabandis/ Khasra Girdawaris or item No. 5 of the undisputed agreement, unless the Court of competent jurisdiction holds or interprets them otherwise, the petitioners had to be held as tenants by the Revenue officers. As such the concurrent finding of the Commissioner and Collector has no legal basis and is a result of wrong appraisal of the evidence. In view of the foregoing, this revision petition is accepted and the impugned orders of the Commissioner (Appeals), Jalandhar Division and Collector, Amritsar are set aside and the order of the Assistant Collector 2nd Grade, Amritsar is upheld.

Announced.

Revision allowed.