
(1994) 01 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10323 of 1991

Dhara Singh and others

APPELLANT

Vs

Financial Commissioner (Revenue), Punjab and another

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 7, 7(1)

Citation : AIR 1994 P&H 254 : (1995) 109 PLR 128

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Mr. A.L. Bahl, for the Appellant; Mr. Surjit Singh Mr. Vikas Singh and Mr. S.C. Chhabra, for the Respondent

Judgement

1. These two Civil Writ Petition Nos. 10323 of 1991 and 9855 of 1992 have been set down for hearing together in pursuance to the orders passed by the Motion Bench. The petitions can, therefore, be disposed of by one order. A few facts may be noticed.

2. On July 3, 1967, one Smt. Jito sold 184 kanals 13 mar las of land to Dhara Singh and Bant Singh. On Nov. 25, 1967, she filed a suit through Babu Singh as her next friend claiming that she being a minor, the sale dated July 3, 1967 was void and could not affect her rights. She prayed for the grant of decree for possession of the land. The suit was contested by the defendants Dhara Singh etc. It was inter alia pleaded that they were in possession as tenants before the sale which could not in any event be disturbed. The suit was decreed by the learned trial Court. This judgment having been affirmed by the lower appellate Court, Dhara Singh filed Regular Second Appeal No. 750 of 1973 in this Court. G.C. Mital, J. decided the appeal with the following observations:--

"Therefore, to conclude, even if Smt. Jito is considered to be minor, I am of the view that the sale dated 3-7-1967 would stand set aside only if she returns Rs. 20,000/- to the vendees within the time to be specified by this Court failing which the sale shall stay. Accordingly, the appeal is allowed, the judgments and

decrees of the two courts below are modified and Smt. Jito is directed to deposit Rs. 20,000/- before the Executing Court on or before 30-4-1983 for payment to defendant-vendees failing which her suit would stand dismissed. In case, Rs. 20,000/- are deposited with the Executing Court by the date fixed, Smt. Jito would be entitled to take actual physical possession of Rectangle No. 88, Killa No. 5 measuring 7 kanals, 12 marlas from the vendees and the remaining land in dispute will remain in possession of the vendees as tenants of Smt. Jito and for that land she would be entitled to a decree for symbolic possession. However, the parties are left to bear their own costs."

3. In accordance with the above, it appears that the amount of Rs. 20,000/- was deposited by Smt. Jito and she was given the actual physical possession of the land measuring 7 kanals 12 marlas. She got symbolic possession of the remaining land which continued to be in possession of the vendees as tenants.

4. Smt. Jogindero, minor daughter of Smt. Jito filed a suit before the Assistant Collector, 1st Grade, Mansa for the recovery of 1/3rd share of batai for the period from Khariff 1968 to Rabi 1984. She claimed a total amount of Rs. 64049,75/-. On October 22, 1986, the suit was transferred to the Court of Assistant Collector 1st Grade, Bhatinda. In support of her she pleaded that she was the owner of 1/2 share of the land measuring 369 kanals 7 marlas out of which Dhara Singh and others had wrongly obtained a sale deed from her mother for land measuring 184 kanals 13 marlas. The sale deed having been set aside and the amount of Rs. 20,000/- having been paid, the tenants were liable to pay the share of the crop claimed by her. This suit was contested by the tenants. The Assistant Collector found that she was entitled to her share from April 30, 1983 when the amount of Rs. 20,000/- was paid in accordance with the judgment of the High Court till the date of the filing of the suit viz. December 4, 1984. Accordingly, he decided the suit in the following terms vide his order dated August 28, 1987 a copy of which is at Annexure P1 in Civil Writ Petition No. 10323 of 1991:--

"In view of my findings on the above issue the suit of the plaintiff is partly decreed. A decree for recovery of Rs. 17,956.85/- paise as batai from 30-4-1983 to 4-12-1984 is ordered to be passed in favour of the plaintiffs and against the defendants with proportionate costs. The defendants are granted six months time from today failing which they shall be liable to be ejected from the land."

5. Both sides filed appeal before the Collector, Bhatinda, which were dismissed vide order dated December 6, 1988. A copy of this order is at Annexure P2. Both the sides filed revision petitions before the Commissioner. While Smt. Jogindero claimed that she was entitled to the full amount of Rs. 64049.75 as claimed by her, the tenants claimed that the Assistant Collector had erred even in partly decreeing the suit and holding that they were liable to be ejected from the land in case they did not deposit the money within six months. It appears that on Nov. 8, 1989, the Commissioner, Ferozepur Division, passed an interim order on the revision petition filed by Dhara Singh and Bant Singh to the following effect:--

"Heard. The counsel for the petitioner has undertaken to deposit the amount decreed in favour of the respondent. He is directed to deposit the same with Assn. Collector, 1st Grade, Bhatinda within one week. Record and service of remaining respondents be completed before 4-12-1989 on which date the case to come up for arguments."

6. In pursuance to this order, the tenants deposited the requisite amount of money on Nov. 15, 1989. Thereafter, vide order dated Sept. 11, 1990, both the revision petitions were dismissed. A copy of this order is at Annexure P6. Undaunted the tenants filed a petition before the Financial Commissioner (Revenue), Punjab contending that the Assistant Collector could not have directed their eviction on their failure to pay the decretal amount within a period of six months from the date of the decree. The learned Financial Commissioner dismissed the revision petition. A copy of this order has been produced as Annexure P7. The tenants have challenged the orders of the Assistant Collector, the Collector, the Commissioner and the Financial Commissioner, copies of which have been produced as Annexures P1, P2, P6 and P7 through Civil Writ Petition No. 10323 of 1991. They have prayed for the quashing of these orders. The writ petition was admitted and status quo regarding possession was ordered to be maintained. On the other hand, Smt. Jogindero, the land owner has filed Civil Writ Petition No. 9855 of 1992 claiming that she was entitled to the arrears of rent as claimed by her from Khariff 1968 to Rabi 1984.

7. Learned counsel for the parties have been heard. Mr. A.L. Bahl, learned counsel for the tenants has contended that the appeal is a continuation of the lis and the decretal amount having been paid within the time allowed by the Commissioner, the order of ejectment passed against the petitioners in Civil Writ Petition No. 10323 of 1991, cannot be sustained. He has placed firm reliance on the decision of this Court in Smt. Gita Devi v. Financial Commissioner, Haryana 1987 PLJ 265. On the other hand, Mr. Surjit Singh has contended that the case of Smt. Gita Devi is clearly distinguishable inasmuch as the interim order regarding stay had been passed by the Collector within the period of six months as prescribed u/s 7. He has further submitted that even if an appeal is considered to be a continuation of the lis, the same principle cannot be applied to proceedings in a revision petition and that the Legislature having granted a period of six months, there was no provision for its further extension. He has also contended that the claim made by the landowner deserved to be decreed in toto.

Section 7(1)(b) provides as under:--

"7. (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds namely:--

(a) *****

(b) that the tenant has failed to pay rent within a period of six months after it falls due:--

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he has failed to pay such arrears during that period."

8. A perusal of the above provision shows that on a tenant's failure to pay rent within a period of six months from the date it falls due, the landlord becomes entitled to terminate the tenancy and seek a decree for that purpose. By virtue of the Proviso to clause (b) as reproduced above, a tenant becomes liable to be ejected only if he does not pay the amount found due within a further period of six months from the date of the decree or the order directing his ejectment.

9. It is clear from the record that the tenants had failed to pay the rent for the period from April 30, 1983 to December 4, 1984. The finding recorded by the Assistant Collector vide his order dated August 28, 1987 is unexceptionable. That having happened, the requirements of clause (b) were fully satisfied. However, when the tenants had still not paid the arrears of rent, the land owner filed a suit. This was partly decreed by the Assistant Collector on August 28, 1987. By virtue of the Proviso to S. 7(1)(b), the tenants had to pay the arrears of rent on or before February 28, 1988. It is the admitted position that they did not do so. The payment was actually made in November 1989. That was well beyond the period statutorily prescribed.

10. Mr. Amrit Lal Bahl, has however, contended that vide order dated November 8, 1989, the Commissioner had permitted the tenants to deposit the decretal amount within "one week". He submits that the deposit having been made in accordance with the order of the learned Commissioner, the provisions of S. 7 have to be deemed to have been complied with.

11. This contention cannot be accepted. Firstly, the Statute does not permit any extension of time beyond the period of six months from the date of the decree. Secondly, on the failure of the tenants to deposit the amount, a right had accrued to the land owner which could not be defeated by an interim order passed by the Commissioner. Thirdly, a perusal of the order clearly shows that the tenants had undertaken to deposit the money and consequently, they were given one week's time to do the needful. Otherwise, the order does not indicate that the Commissioner was in any way giving time to the tenants so as to undo the effect of the provisions of S. 7.

12. Faced with this situation, Mr. Bahl was forced to fall back on the decision in Smt. Gita Devi's case (*supra*). The observations contained in paras 3 and 4 which are relevant for the decision of this case may be noticed as under :--

"A reading of the proviso makes it clear that a protection is given to the tenant and it is laid down that he shall not be ejected for his failure to pay the rent unless he has been afforded an opportunity to pay the same within a period of six months from the date of decree or order directing his ejectment and he has failed to pay such arrears during that period. Admittedly, before the said period

expired from the date of decree of ejectment passed by the Assistant Collector, respondent No. 3 had filed an appeal before the Collector and his ejectment from the land in dispute was stayed. It has been explained on behalf of respondent No. 3 that he was under a misapprehension that since his ejectment from the land had been stayed, he was not required to make the deposit within six months from the date of decree of the Assistant Collector. Later, however, to avoid any complications, he deposited the amount of Rs. 90/- on 5-1-1971. No doubt, the appeal was dismissed by the Collector on 22-5-1971.

The order of dismissal of the appeal by the Collector, is to be construed as a fresh decree for ejectment as the decree under appeal passed by the Assistant Collector has merged in the same. Thus the order of the Collector would afford by implication a fresh starting point to respondent No. 3 for depositing the amount of arrears of rent within a period of six months. I find support for this view that Dattaraya Tawalay Vs. Shaikh Mahboob Shaikh Ali and Another, . It is well settled that an appeal is a rehearing of the lis. Once the decree passed by a Court has been appealed against, the matter becomes subjudice again and thereafter the Appellate Court has the seisin of the whole case though for certain purposes, for example execution, the decree passed by the Court below is regarded as final and they retain jurisdiction in this respect. In the present case, however, ejectment of respondent No. 3 had been stayed. A Court of appeal has the same powers and performs as nearly as may be the same duties as are conferred and imposed on courts of original jurisdiction. Thus, whether it dismisses the appeal or allows the same, it passes a fresh decree. This view finds support from Amarjit Kaur Vs. Pritam Singh and Others, ."

13. A perusal of the observations quoted above shows that the tenant had been granted interim stay regarding dispossession within six months from the date of the order passed by the Assistant Collector and that the amount of Rs. 90/- had been paid before the decision of the appeal. Such is not the position in the present case. Consequently, on facts, the case is clearly distinguishable. Still further, it is undoubtedly correct that the learned single Judge has been pleased to take the view that the order passed by the Collector dismissing the appeal "is to be construed as a fresh decree for ejectment..... "According to the learned Judge "by implication, a fresh starting point to respondent No. 3 for depositing the amount of arrears of rent within a period of six months" is available. Assuming it to be so, the petitioners still j cannot succeed. It is the admitted position that the Collector had dismissed the appeal vide order dated December 6. 1988. Even if the period of six months is counted from this dale, the deposit had to be made before June 6, 1989. This had not been done. It is, therefore, apparent that this decision is of no assistance to the tenants. Furthermore a Full Bench of this Court in Gurmej Singh and Others Vs. The Financial Commissioner, Revenue, Punjab, Chandigarh and Others, has clearly held that if a tenant fails to pay the arrears of rent within the prescribed period, he has to face ejectment. This is the precise position in the present case. Consequently, the impugned orders are in strict conformity with law and cannot be quashed.

14. As a result, Civil Writ Petition No. 10323 of 1991 has no merit and is consequently dismissed.

15. As for the claim of the land owner who is the petitioner in Civil Writ Petition No. 9855 of 1992, it deserves mention that Dhara Singh and Bant Singh were held to be tenants even by this Court vide judgment dated 21-9-1982 in R.S.A. No. 750 of 1973. However, they had purchased 184 kanals 13 marlas of land vide sale deed dated July 3, 1967. While disposing of the above mentioned appeal, this Court had held that Smt. Jito had to deposit Rs. 20,000/- before the executing court on or before April 30, 1983 failing which her suit would stand dismissed. It was only after making the deposit that she could become entitled to the setting aside of the impugned sale deed. Admittedly this deposit was made by her in April, 1983. For the period from July 3, 1967 to April 3, 1983 (when the deposit was made), the respondents viz. Dhara Singh and Bant Singh had rights as owners of the property. They were thus not liable to pay any rent. The claim made by the land owner for this period has been rightly rejected by the various authorities. There is no infirmity in the orders which may call for interference. Consequently, even this petition is liable to be dismissed.

16. As a result of the above discussion, both the writ petitions are dismissed. The parties are left to bear their own costs.

17. Petition dismissed.