
(1980) 12 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No 1096 of 1979

Gulzari Lal and Another

APPELLANT

Vs

Rama Nand and Others

RESPONDENT

Date of Decision : 08-12-1980

Acts Referred:

Court Fees Act, 1870 — Section 7(v)(e)

Citation : (1981) 3 ILR (P&H) 171 : (1981) 83 PLR 272

Hon'ble Judges : Prem Chand Jain, J;J.M. Tandon, J

Bench : Division Bench

Advocate : Muneshwar Puri, for the Appellant; M.L. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—Gulzari Lal, petitioner and another filed a suit for possession by redemption of one two-storeyed house situate in Mohalla Rai Silla, Ambala City, on payment of Rs. 4,000/-. The mortgagees did not contest the claim of the plaintiffs. The suit was contested by Vijay Kumar, defendant No. 6, on the plea that his father was a tenant of the property under the mortgagors, that he would also be deemed to be a tenant under the mortgagors and that he is liable to be evicted only under the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Eviction Act).

2. On the pleadings of the parties, several issues were framed. The trial Court, on the basis of the evidence available on the file, decreed the claim of the plaintiffs for redemption on payment of Rs. 4,000/- against defendants Nos. 1 and 2, but declined the relief against defendant No. 6 on the basis of the finding that he (defendant No. 6) had been a tenant under the mortgagors and that he could be ejected only under the provisions of the Act.

3. Feeling aggrieved from the judgment and decree of the learned Subordinate Judge to the extent of the relief refused against defendant No. 6, the plaintiffs preferred an appeal. At the time of the hearing of the appeal before the learned

District Judge, Ambala, one of the preliminary objections raised on behalf of the contesting defendant was that the memorandum of appeal was not properly valued for the purpose of Court-fee. This preliminary objection was sustained and the learned District Judge held that ad valorem court-fee on the market value of the property in dispute was payable in terms of Section 7(v)(e) of the Court Fees Act, 1870 (hereinafter called the Act). In view of this finding, the petitioners were directed to make good the deficiency in the Court-fee.

4. Feeling aggrieved from the aforesaid order of the learned District Judge, the present revision petition has been filed, which came up for hearing before me on April 15, 1980. After hearing the learned counsel for the parties at great length, I found that the point involved in the petition was of considerable importance and deserved to be settled by a larger Bench. Consequently, I decided to refer the petition for decision to a larger Bench and that is how we are seized of the matter.

5. On the admitted facts the only point that needs determination is as to what amount of Court-fee would be payable on an appeal filed by the plaintiff in a case where a decree for redemption has been passed; but the relief with regard to possession of the property has been declined.

6. It may be observed at the outset that in spite of the research made by the learned counsel for the parties, no direct authority on the aforesaid point was brought to our notice. In this situation, the matter has to be decided on first principle.

7. The learned counsel for the petitioners contended that the finding of the learned District Judge was not legally sustainable. What was sought to be argued by the learned counsel was that clause (ix) of Section 7 was the only provision which would be applicable in cases where relief with regard to possession of the property has been declined to the plaintiff inspite of the fact that his right to redeem the property has been recognised, as without a decree for possession, decree for redemption would be meaningless. It was further submitted by the learned counsel that merely on the basis of the finding given by the trial Court, which is still to be gone into by the appellate Court, no relationship of landlord and tenant comes into existence between the plaintiff-mortgagor and the tenant and that for the recovery of the property from the possession of the mortgagees, Court-fee would be payable under clause (ix) of Section 7.

8. On the other hand, it was submitted by Mr. M.L. Sarin, learned counsel for the respondents that for the purpose of court-fee, the relief claimed in the memo of appeal has to be looked into, that the plea set forth in the grounds of appeal by the plaintiffs is that the contesting defendant is a trespasser and is in possession of the property without any right, that keeping in view the plea set up in the grounds of appeal and the status of the contesting defendant described therein by the plaintiffs themselves, the view taken by the learned District Judge is correct and that clause (ix) of Section 7 would not apply in cases where the right to redeem the property has been recognised and a decree in that respect has

been passed.

9. After giving our thoughtful consideration to the entire matter, we find considerable force in the contention of the learned counsel for the petitioners. As is evident from the facts, plaintiffs suit was for possession by redemption. The trial Court only allowed redemption, and did not grant a decree for possession as it was held that Vijay Kumar, respondent was tenant under the mortgagor and not mortgagees. The plaintiffs have filed an appeal against the judgment and decree of the trial Court refusing the relief of possession. There is no gain saying that in case the trial Court had found Vijay Kumar to be the tenant of the mortgagees, then a decree for possession would also have been passed in favour of the plaintiffs. The position of a tenant who is inducted by the mortgagees is of precarious nature; he sinks and swims with the mortgagees. In such a case, the moment right to redeem the property is established, a decree for possession follows. A tenant inducted by the mortgagees has nothing to do with the mortgagor. In such a case, the mortgagor is entitled to recover possession of the property from the mortgagees. Relationship of landlord and tenant is not created between the mortgagor and the tenant who is inducted by the mortgagees. Clause (ix) of Section 7 envisages suits, against a mortgagee for the recovery of the property mortgaged. If the plaintiff succeeds finally in obtaining a finding that the tenant was not inducted by him, then he would certainly be entitled to recover possession of the property mortgaged. So far as the tenant is concerned his position is precarious as in the event of the finding that he was inducted by the mortgagees, he is left with no right in the property and is liable to be ejected. It is correct that in the grounds of appeal, the petitioner has described Vijay Kumar respondent as trespasser, but that fact would not in any way change the position as the main relief of possession by way of redemption is being claimed against the mortgagees and in the event of plaintiff proving that Vijay Kumar respondent was inducted by mortgagees, the relief of possession is bound to be granted. The decree for possession is to be granted against mortgagees, and tenant inducted by the mortgagees is bound by such decree. Merely the fact that Vijay Kumar has been described as the trespasser, in the grounds of appeal, would be of no consequence, nor would such a plea be of any assistance in deciding the question of court-fee in the instant case. Further till the finding of the trial Court becomes final that the tenant was inducted by the mortgagor, no relationship of landlord and tenant between the mortgagor and the tenant would come into being. In this situation, it seems to us more plausible to hold that where a relief of possession has been declined on the ground that the tenant was inducted by the mortgagor and not the mortgagees, provisions of clause (ix) of Section 7 for the purpose of affixing court-fee in appeal, would still be applicable.

10. As a result of the aforesaid discussion, we find ourselves unable to agree with the view taken by the learned District Judge and consequently reverse his finding and hold that the plaintiffs are liable to pay Court-fee on the memorandum of appeal in terms of clause (ix) of Section 7 of the Act. The plaintiffs are granted two months' time to make up deficiency in the court-fee.

Parties through their learned counsel are directed to appear before the learned District Judge, Ambala, on 5th of January, 1981.