
(1980) 03 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No 825 of 1971

Hazari Lal

APPELLANT

Vs

The Financial Commissioner, Punjab and others

RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 14A(i)

Citation : (1980) 03 P&H CK 0025

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : H.L. Sarin and Mr. M.L. Sarin, for the Appellant; N.L. Dhingra, for Respondents Nos. 2 to 6 and Memo, for Respondent No.1, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—Shrimati Pari filed an application u/s 14-A (i) of the Punjab Security of Land Tenures Act. (hereinafter called the Act), for ejectment of her tenant Hazari Lal inter alia on the ground that he had not paid the rent for the harvests Khsrif, 1961 to Rabi, 863(sic) The Assistant Collector accepted this application and ordered the ejectment of Hazari Lal by order dated 25th of January, 1964. On appeal by the tenant, the case was remanded by the Collector for fresh decision On receipt of the cast on remand, the Assistant Collector dismissed the application on May 27, 1966 holding that the landlord had failed to prove that the tenant had not paid the rent She went up in appeal before the Collector. There the counsel for Hazari Lal the tenant, made an offer that his client was agreeable to be ejected if Shrimati Pari stated on oath that she had not received the rent for the harvests in question. In response to this offer Shrimati Pari made a statement on oath wherein she stated that she had not received the rent claimed from Hazari Lal. The Collector accepted this statement and held that in view of Section 11 of the Oaths Act, both the parties were bound by the oath and he could not go into the legality of the agreement. There was no issue of law and fact to go into. He, therefore, accepted the appeal and ordered

the ejectment Hazari Lal tenant filed revision against this order which was dismissed by the Commiisioner en 8th of September, 1952(sic). Still dissatisfied. Hazari Lal filed a revision petition before the Financial Commissioner This was also dismissed by him on August 1, 1970. Hazari Lal has filed this writ petition against the orders of the revenue authorities, ordering his ejectment.

2 Mr M.L. Sarin, learned Counsel for the Petitioner has argued that the learned Counsel appearing for the Petitioner in the Court of Collector had no jurisdiction to make an offer that his client may be ejected if Shrimati Pari made a statement on oath that she had not received the rent, He contended that the counsel was authorised only to act and plead on behalf of his client. He had not been given the specific authority to make an offer and to bind his client by an oath by the opposite side- He has relied upon a decision of the Rajasthan High Court in Bansilal Vs. Jasraj, However, facts of that case are entirely different. In that case, the counsel had been authorised only to plead on behalf of the client He had not been given any authority to enter into a compromise or do any such act on behalf of the client It was under these circumstames that the Rajasthan High Court had held that the client was not bound by the statement made by the counsel. In the present case, through the power of attorney, Hazari Lal had given his counsel authority to enter into a compromise. It had been further said that he was bound by every action taken by the Advocate on his behalf The language in which the authority has been given, in the present case, is all comprehensive. The Advocate had been invested with authority to enter into a compromise and the Petitioner had committed to be bound by every action taken by the Advocate. Under these circumstances, the learned Counsel appearing for Hazari Lal had the authority to make the offer which he made The decision in Sadashiv Ravali v. Maruti Vithal and othersI L. R. XIV Bom. 455 , also does Dot held the learned Counsel. In that case, the counsel had been authorised to plead and Act on behalf of his client. No authority had been given to him to compromise the cause. While interpreting the language employed in the power of attorney, it Was held that the counsel could do only that which was necessary for the prosecution of the suit in the ordinary way The language of the power of attorney was different in that case. So in the present case, the learned Counsel appearing for Hazari Lal had the authority to make an offer to be bound by the oath to be administered to the opposite party.

3. Mr Sarin, then contended that a tenant can be ejected only on the grounds given in Section 9 of the Act The Assistant Collector 1st Grade can order ejectmet only he(sic) comes to the conclusion that the tenant is liable to be ejected on the grounds given in Section 9 of the Act. He has to given a positive finding on the basis of evidence before him In the absence of that finding, no ejectment can be ordered By section II of the Oaths Act. a conclusive, presumption is raised when a party takes the oath at the instance of the opposite party. According to Mr Sarin, at best a piece of evidence had come on the file on which the Collector could rely. He could on the basis of this piece of evidence come to the conclusion that the tanant had not paid the rome(sic). He could take

this fact into account and decide the matter. However, under the Act mere non payment of rent is not a ground for ejectment. The default of non payment should be regular and it should be without sufficient cause. Mr. Sarin has contended that there is no finding that there was default in making the payment, the default was regular and it was without sufficient cause In the absence of these findings of fact, the order of ejectment is illegal In support of this contention, he has also relied upon Ferozi Lal Jain Vs. Man Mal and Another, On the other hand Mr. N. L. Dhirgra appearing for the successors in interest of Shrimati Pari, the Original landlady, has contended that a valid offer had been made by the learned Counsel appearing on behalf of Hazari Lal, that if she made an oath in Court and stated that he had not received any rent from Hazari Lal, then the derision may be given against Hazari Lal. This offer had been accepted by Shrimati Pari. She appeared in Court and stated on oath that she had not received even a penny from Hazari Lal. He had not paid any money even to Kanshi Ram It may be mentioned here that Hazari Lal had stated that Kanshi Ram was the general attorney for Shrimati Pari. Mr. Dhirgra contended that the parties had entered into in agreement and that agreement had become complete with the making of an oath by Shntaatt Pari Further that the decree of ejectment had to follow He contended that the ratio of Feroz Lal ,Jain case (supra) is not applicable to the facts of the present case. He further argued that the view in Ferozi Lal Jain"s case (supra) has been modified in the latter decisions of their lordships of the Supreme Court. In support of this contention, he has referred me to Roshan Lal and Another Vs. Madan Lal and Others, wherein it has been held as under: -

If however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impllledly is agreeing(sic) to suffer a decree for eviction because the landlord, in the circumstances, is milled to have such a decree under the law.

I have carefully considered the contentions raised by the learned Counsel. In view of the language employed in Section 11 of the Oaths Act, the statement of Shrimati Pari partakes the character of valuable piece of evidence. The Collector can rely on this On the basis of the statement he could hold that Hazari Lal bad not paid the rent to Shrimati Pari or Kanshi Ram. However, in the impugned order the Collector has not given any such finding. He has not held it as a fact that Hazari Lal had not paid the rent claimed from him by the landlady He also did not hold that the default made by the tenant was without sufficient cause In view of the clear language of section of the Act, the ejectment of Hazari Lal could be ordered only after living a finding that he had failed to pay the rent regularly without sufficient cause Since the Collector has not given this finding, the order of ejectment passed against Hazari Lal is clearly violative of Section 9 of the Act.

4. Section 11 of the Oaths Act, 1873 is in the following terms: - " The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated." So the statement made by Shrimati Pari was a conclusive proof against the Petitioner that he had not paid the rent. It could not go beyond that But that is not sufficient to order ejectment It has further to be held that the default in payment was without sufficient cause. The Collector did not apply his mind to this aspect of the case He concluded that in view of section It of the Oaths Act, both the parties are bound by this offer.

5. Section 11 of the Oaths Act, does not in terms provide for passing of an order or decree. The Section only makes a statement made on oath conclusive proof of the facts stated against the person making the offer. In view of the statement made by Shrimati Pari it could he held that Hazari Lal, had not paid the rent to her However, the Collector concluded that in view of the statement made by Shrimati Pari, he had not to give any finding on the grounds of ejectment raised in the application u/s 184(1)of the Act. this approach of the Collector was wholly illegal. He could not pass the judgment only on the statement of the learned Counsel. He had to appreciate the statement of Shrimati Pari alongwith the other evidence on the file and then to give a positive finding as to whether the tenant had failed to pay the rent. Furthermore, he had to give a finding whether the default in payment was justifiable or not Since (he Collector has failed to give any such finding, his order ejecting the tenant is clearly illegal.

6 For the reasons recorded above, I allow this petition, set aside the orders dated 24th October 1967, 8th September, 1969 and 1st of August, 1970 of the Collector, Commissioner and Financial Commissioner respectively However, there will be no order as to costs.