(1978) 09 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 820 of 1975

Ishar Singh APPELLANT

Vs

The Financial Commissioner (Revenue) Punjab and others RESPONDENT

Date of Decision : 11-09-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 09 P&H CK 0007

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : A.N. Mittal and Mr. Viney Mittal, for the Appellant; Achhra Singh, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The disputes has a chequered career and the facts leading to the launching of the present Civil Writ Petition in this Court under Articles 226/227 of the Constitution of India may be briefly recapitulated. According to the claim of the petitioner he was a tenant of the disputed land in Village Anian under Jit Singh and Dogar Singh Jit Singh is said to have sold his land to Ralla Singh and Sohan Lal, respondents Nos. 4 and 5. The petitioner, however, claimed that he continued to be in possession of the land as atenant in spite of the sale Dogar Singh who was adoptive father of Surinder Singh respondent No. 3, had filed an application for partition of his own share in the land before the Revenue Authorities and in these proceedings the petitioner was admittedly dispossessed of that share and a report in regard to this fact was made in the roznamcha of the Patwari on November 5, 1959. The petitioner, however, asserts that his dispossession was forcible and illegal. The petitioner then moved an application u/s 43 of the Pepsu Tenancy and Agricultural Lands Act (hereinafter referred to as the Act) before the Assistant Collector First Grade, Nabha, respondent No. 2, with a prayer that the possession of the disputed land which was now with respondents Nos. 3, 4 and 5, may be restored to him. The Assistant Collector after notice to the said respondents, framed the following preliminary issues in the matter:--

(1) Whether this application is maintainable in the present form ? OPP.

(2) Whether this Court has no jurisdiction to try this application ? OPR

Additional Issue

(1) Whether the respondents are liable to be ejected ?

The parties led evidence in support of these issues. At the time of arguments, a legal objection was raised that the application filed by the petitioner u/s 43 of the Act was barred by limitation and that this matter may be considered in priority. It was contended that the limitation prescribed for such an application is only one year from the date of dispossession. It is apparent that in consequence of a warrant of possession issued by the Assistant Collector First Grade dated November 4, 1969, the petitioner was dispossessed on November 5, 1969. The application u/s 43 of the Act was filed on July 29, 1971 i.e. after about one year and nine months of the dispossession. The teamed Assistant Collector placed reliance on Sohla Singh v. Shrimati Bhagwan 1968 P.L.J. 79, on the point and in the absence of any other authority having been brought to his notice, he dismissed the application as barred by limitation.

2. The petitioner, being dissatisfied with the decision of the Assistant Collector went up in appeal before the Commissioner, Patiala Division, Patiala, u/s 39 of Act. Before the learned Commissioner, only two points were urged on behalf of the petitioner. The first contention was that before denying relief to the petitioner, the Assistant Collector should have framed a specitre issue on the question of limitation. The learned Commissioner, however repelled this argument by observing that the strict application of the CPC was not necessary in proceedings u/s 43 of the Act winch are of a summary nature. The second point which was urged in appeal was that for an application u/s 43 of the Act the period of limitation was not one year and in such cases it is Article 137 of the Indian Limitation Act which should apply according to which the period of limitation is three years On the other side, the argument was controverted by reference to section 50 of the Punjab Tenancy Act on the analogy of which the period of limitation for purposes of section 43 of the Act was to be reckoned as one year. This submission was supported by reference to Sohla Singh v. Smt. Bhagwan (supra). The appellant petitioner also sought support from some other authorities for his contention that on the basis of Article 137 of the Indian Limitation Act, the period of limitation should be reckoned as three years. This contention was accepted by the Commissioner who while accepting the appeal, remanded the case to the Assistant Collector to decide the application of the petitioner on merits Copy of the order of Commissioner is Annexure P/2 to the Writ Petition.

3. The matter did not end there. The defeated party, i.e., the respondents filed a

Revision Petition u/s 39 of the Act before the Financial Commissioner (Revenue), Punjab, against the order of the Commissioner aforesaid. The revision-petitioners (respondents in the present Writ Petition) urged through their counsel that Article 137 of the Indian Limitation Act was applicable only to applications filed before Courts and not before Revenue Officers and in support of this contention, two decisions of the Supreme Court, i.e. Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and Nityanand M. Joshi and another v. The Life Insurance Corporation of India AIR 1978 S.C. (209), were cited. On the basis of these authorities, the learned Financial Commissioner drew a distinction between the Revenue Courts and Revenue Officers and found that the proceedings initiated by the petitioner u/s 43 of the Act which were of a summary nature were really proceedings before a Revenue Officer and not before a Revenue Court. A large number of other authorities were also considered by the learned Financial Commissioner on the point that the limitation for an application u/s 43 of the Act was only one year and could not be extended to three years by resort to Article 137 of the Indian Limitation Act. The main contention which prevailed with the learned Financial Commissioner was that section 50 of the Punjab Tenancy Act provides for a regular remedy in case a person is dispossessed which remedy he could challenge only within a period of one year from his dispossession and in the wake of this regular remedy, the period of limitation could in no case be extended for summary proceedings under the Pepsu Tenancy and Agricultural Lands Act, 1955. The argument was advanced further with the contention that once the right of possession of property is extinguished on account of the bar of limitation, it cannot be revived by an application for summary proceedings. Section 27 of the Indian Limitation Act, 1963, was relied upon in support of this contention In regard to the interpretation of the section, the learned Financial Commissioner referred to Dindayal and Another Vs. Rajaram, , wherein their Lordships held that the principle underlying section 28 of the Limitation Act, 1908 (which are the same as section 27 of the Limitation Act, 1963) is of general application and this principle is not confined only to suits and applications for which a period of limitation is prescribed under the Limitation Act.

4. On behalf of the petitioner, the argument advanced before the Financial Commissioner was the same that section 43 of the Act made no reference to section 50 of the Punjab Tenancy Act and the latter statute could not be looked into for the purpose of assessing the period of limitation. Certain authorities in support of these contentions were cited 5 After giving the matter a very detailed consideration in his judgment running into nineteen pages, the learned Financial Commissioner ultimately came to the conclusion that Article 137 of the Indian Limitation Act did not apply to applications filed before Revenue Officers and for purposes of calculating the period of limitation resort had to be made to see the statute which provides a regular remedy in such matters i.e. section 50 of the Punjab Tenancy Act, 1887. Since the period of limitation prescribed for the remedy under the said provision is one year it was concluded that the same

period would govern an application u/s 43 of the Act. The application filed by the petitioner being admittedly barred by eight months and 24 days, was accordingly dismissed by upholding the verdict of the First Officer who dealt with the matter, i.e., Assistant Collector, First Grade, Nabha, The present Writ Petition has now been filed with a view to challenge the decision of the learned Financial Commissioner aforesaid.

6. With the above background of the controversy before me, it is obvious that the arena is a very limited one. A plethora of case law is not required to go into the solitary question which has been mooted by all the authorities on the revenue side and before this Court in the present Writ Petition. So far as this Court is concerned, if a clear verdict of the Hon''ble Supreme Court is available, that is binding on it and the matter would not brooke any further discussion by straining to view the same in a distorted manner as is the mission of the petitioner The Revenue Authorities which were seized of the matter and particularly the Financial Commissioner noticed the final verdict of the Supreme Court in Dindayal''s case (supra). It would be beneficial to reproduce an extract from paragraph 10 of the judgment :

It was urged on behalf of the appellants that in view of the principle underlying section 28 of the Indian Limitation Act, 1908, which principle is not confined to suits and applications for which limitation is prescribed under that Act but is of general application, the plaintiff''s right to the suit properties must be held to have been extinguished. In other words, the contention was that in view of the aforementioned provisions, the plaintiffs had not merely lost their right to sue for possession of the suit properties, their right in the properties itself had been extinguished. It is well settled that the principle underlying section 28 of the Indian Limitation Act, 1908 (same as section 27 of the Indian Limitation Act, 1963) is of general application. It is not confined to suits and applications for which a period of limitation is prescribed under the Limitation Act.

7. A learned Single Judge of this Court, S.S. Sandhawalia, J. (now Hon''ble the Chief Justice) who was seized of a matter requiring consideration of the same point which is facing scrutiny now in Jai Nardin v. Sarup Singh 1974 P.L.J. 205 by placing reliance upon Dindayal''s case (supra) held that it was manifest that even assuming for the sake of arguments that the respondent (in that case) was a tenant earlier on the land, he ceases to be so after his dispossession. The precedent of a Full Bench of this Court in Bhag Singh and Others Vs. Jawahar Singh and Others, , was found binding on the point that on a failure to Wing the suit for recovery of possession against wrongful ouster the tenant loses his remedy altogether and is debarred from bringing the suit for the same under the general law of Limitation even in a civil Court. The present is a much worse ease where the relief is being claimed merely in summary proceedings.

8. On behalf of the petitioner, with a view to extract himself from the rigours of Dindayal''s case (supra), the farthest his learned counsel could go is to refer to the following observations made by the Supreme Court in Munshi and Others Vs.

Richpal and Others, . These observations in paragraph 2 of the judgment of the Division Bench are as follows :

Though the learned counsel for the appellants cited a few cases in support of his contention but did not unfortunately bring to our notice the decision of this Court in Dindyal and another v. Rajaram, which may in an appropriate case require reconsideration by a larger Bench of this Court, we think he cannot be allowed to canvass the aforesaid point.

Apart from the fact that the above judgment of the Supreme Court is by two Hon''ble Judges while that in Dindayal''s case (supra) was by a Bench of three Hon''ble Judges, Muushi''s case (supra) is also distinguishable on fact, as the point for consideration in this case pertained to the obligation of the plaintiff-preemptor to prove his subsisting right of preemption on three material dates viz; (1) the date of sale, (2) the date of institution of the suit; and (3) the date of passing of the decree. The Hon''ble Judges also noticed that the record of the case indicated that the point now sought to be agitated before them was not raised by the appellants either in their written statement or in the grounds of the three appeals preferred by them before the Court below. In any case, as is mentioned in the observations reproduced above their Lordships merely indicated that the decision in Dindayal''s case (supra) may require reconsideration. Till and until that is done, the verdict is indeed binding on this Court.

9. In the light of the facts and circumstances discussed above, there is no merit in this writ petition which is dismissed, but with no order as to costs.

