
(2008) 12 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 1155 of 2008

Janak Raj and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Citation : (2009) 2 RCR(Civil) 346

Hon'ble Judges : J.S.Khehar, J and Nirmaljit Kaur, J

Advocate : Mr. Ramesh Sharma, Advocate. Ms. Ritu Bahri, DAG, Haryana. For the Respondents No. 5 to 9, Mr. Mahavir Sandhu, Advocate., Advocates for appearing Parties

Judgement

J.S. Khehar, J. (Oral)

1. The case set up by the petitioners before us is, that the petitioners" predecessors in interest entered into an agreement to sell dated 7.12.1979, wherein the property in question (over which the petitioners" predecessors were tenants) was sought to be purchased by the petitioners" predecessors from Ram Piari and Bhagwan Dass. Ram Piari and Bhagwan Dass, however, admittedly did not transfer the ownership of the land in question by executing any registered sale deed in favour of the petitioners" predecessors. The petitioners" predecessors, therefore, filed a civil suit at Karnal. In the aforesaid civil suit filed by the petitioners" predecessors, they claimed specific performance of the agreement to sell dated 7.12.1979.

2. The claim raised by the petitioners" predecessors on the basis of the agreement to sell dated 7.12.1979, was dismissed by the trial Court at Karnal, by a judgement/decreed dated 24.1.1983. The trial Court arrived at the conclusion, that the petitioners" predecessors had failed to prove, that the agreement to sell had been executed (by the petitioners" predecessors) in respect of the land, which is subject matter of the present controversy. It is not a matter of dispute, that an appeal was preferred by the petitioners" predecessors against the judgement/decreed dated 24.1.1983 before the lower Appellate Court,

and yet again (after the dismissal of the same by the lower Appellate Court), before this Court. This Court eventually dismissed RSA No. 716 of 1986 on 16.5.1986. It is, therefore, clear that the claim of the petitioners' predecessors on the basis of the agreement to sell dated 7.12.1979 failed, and as such, the claim of the petitioners' predecessors on the basis of the agreement to sell dated 7.12.1979, became final. The petitioners, therefore, can no longer rely on the agreement to sell dated 7.12.1979, so as to claim any relief.

3. Whilst Ram Piari and Bhagwan Dass were owners of the land under reference, they filed an application for ejectment against the petitioners herein on account of nonpayment of rent. The instant application was filed on 30.10.1986. The Assistant Collector, 1st Grade, Karnal, allowed the aforesaid application by passing an ex parte order against the petitioners on 23.2.1987. The petitioners preferred an appeal against the order dated 23.2.1987 before the Collector, Karnal. The Collector, Karnal, accepted the appeal preferred by the petitioners on 14.7.1987, and remanded the matter for readjudication to the Assistant Collector, Ist Grade, Karnal.

4. During the pendency of the ejectment proceedings initiated against the petitioners by the original landlords, part of the aforesaid land was purchased by respondents No. 5 to 9 (herein) on 14.10.1987. Having done so, respondents No. 5 to 9 moved an application before the Assistant Collector, Ist Grade, Karnal, seeking to be impleaded as parties in the ensuing litigation as they had allegedly stepped into the shoes of the previous landlords. The aforesaid application came to be dismissed by the Assistant Collector, Ist Grade, Karnal, on 2.3.1989, and the appeal filed against the order dated 2.3.1989 was dismissed by the Collector, Karnal on 5.8.1989.

5. The entire remaining land, which is subject matter of the present controversy, was purchased by respondents No. 5 to 9 (herein) through two subsequent sale deeds dated 12.11.1990 and 13.2.1991. Thereafter, respondents No. 5 to 9 completely stepped into the shoes of the earlier landlords i.e. Ram Piari and Bhagwan Dass.

6. Having acquired ownership rights in respect of the suit land, respondents No. 5 to 9 then preferred a civil suit, seeking possession of the land in question from the petitioners (herein) by alleging, that the petitioners were in unauthorised possession of the suit land. The aforesaid suit filed by respondents No. 5 to 9 at Karnal, was dismissed on 23.12.2002. It is not a matter of dispute, that the aforesaid order dated 23.12.2002 eventually attained finality as no appeal was preferred against the same.

7. For the first time, respondents No. 5 to 9 filed an application for ejectment under the provisions of the Punjab Security of Land Tenures Act, 1953, on the ground of nonpayment of rent. It is important to notice, that the conceded position before this Court at the hands of the petitioners is, that the petitioners had not paid any rent since the year 1979 onwards. It is also conceded, that

consequent upon the filing of the aforesaid application by respondents No. 5 to 9 (herein) the petitioners actually did not pay any rent to respondents No. 5 to 9.

8. The ejectment application was contested, firstly, by asserting that the petitioners had acquired ownership rights over the land in question. The claim of ownership raised in response to the ejectment application, was based on adverse possession. It was asserted that the petitioners were in occupation of the land in question, and had not paid any rent since the year 1979, and as such, they could no longer be treated as tenants. Secondly, it was claimed by the petitioners, that the petitioners, having entered into an agreement to sell with the earlier landlords, namely, Ram Piari and Bhagwan Dass, their relationship of landlord and tenant with Ram Piari and Bhagwan Dass had come to an end. On the instant issue, the petitioners placed reliance on a decision rendered by the Supreme Court in *R. Kanthimathi v. Mrs. Beatrice Xavier*, 2003(2) PLJ 211. The third contention, advanced by the learned counsel for the petitioners, was that the action of the petitioners in not paying rent to respondents No. 5 to 9 was bonafide, it was alternatively pleaded, that in case the petitioners (herein) are declared to be tenants, they would be ready and willing to discharge their responsibility and pay arrears of rent, interest, as well as, costs. It is only these three submissions, which have been pressed at the hands of the learned counsel for the petitioners before this Court.

9. In so far as, the issue pertaining to adverse possession is concerned, the petitioners are estopped in law from raising the same after having acknowledged, that they entered the possession over the land in question as tenants of Ram Piari and Bhagwan Dass. In so far as the present proposition is concerned, reliance may be placed on Section 116 of the Indian Evidence Act, 1872 (hereinafter referred to as the 1872 Act). Section 116 of the aforesaid Act is being reproduced hereunder :

"116. Estoppel of tenant and of licensee of person in possession : No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had title to such possession at the time when such license was given."

On account of the clear mandate of Section 116 of the 1872 Act, since it is not disputed by the petitioners, that Ram Piari and Bhagwan Dass were originally owners of the land in question, and that, the predecessors in interest of the petitioners were tenants under them, and that, the petitioners had acquired the rights from their predecessors, who were tenants under Ram Piari and Bhagwan Dass, we are satisfied that the claim of adverse possession, raised by the petitioners, is wholly frivolous, specially because respondents No. 5 to 9 stepped into the shoes of Ram Piari and Bhagwan Dass after purchasing the land under reference. In our view, the fact that the petitioners had not paid any rent from

1979 onwards is inconsequential. Additionally, the petitioners have not invited our attention to any evidence to establish any action at the hands of the petitioners proclaiming ownership rights over the land in question during the period they were in possession of the land in question. In view of the above, the first contention advanced by the learned counsel for the petitioners, does not merit acceptance and is, accordingly, declined.

10. The second contention advanced by the learned counsel for the petitioners, is based on the decision rendered by the Apex Court in R. Kanthimathi's case (supra). We are afraid, that the submission advanced by the learned counsel for the petitioners, is clearly inapplicable to the facts and circumstances of the present case. In order to even prima facie raise the instant contention, namely, that once there is an agreement to sell between the landlord and tenant, then the relationship of landlord and tenant ceases to exist, vests the onerous responsibility in the petitioners to establish, that there was factually an agreement to sell between the predecessors of the petitioners and Ram Piari and Bhagwan Dass. We are of the view, that in so far as the finding on the aforesaid proposition is concerned, the same was rendered in furtherance of a civil suit filed by the petitioners themselves at Karnal, wherein it came to be concluded, that the petitioners had failed to prove that the agreement to sell dated 7.12.1979 had been executed by them in respect of the land, which is subject matter of the present controversy. That being so, it is not possible for us to draw any inference on the basis of the aforesaid agreement to sell dated 7.12.1979. It is, therefore, not possible for us to accept, that the relationship between the petitioners' predecessors and Ram Piari and Bhagwan Dass, of landlord and tenant, ever came to an end.

11. The third contention advanced by the learned counsel for the petitioners, was to the effect, that the petitioners would be ready and willing to tender rent, interest thereon and costs, if the authorities recorded a finding to the effect that the relationship of landlord and tenant subsists between the parties. In so far as the present issue is concerned, we have already held in our conclusions recorded in furtherance of the first, as well as, the second submission advanced by the learned counsel for the petitioners, that the relationship of landlord and tenant between the petitioners' predecessors and Ram Piari and Bhagwan Dass never came to an end. Since the petitioners have merely inherited the rights of their predecessors, the relationship of landlord and tenant between the petitioners and Ram Piari and Bhagwan Dass, in the first instance, and thereafter, with respondents No. 5 to 9 continued to subsist. The only question that remains to be considered is, whether the petitioners can be permitted to tender all arrears of rent at the present juncture ? It is not possible for us to allow the petitioners to redeem themselves by making any payment of rent, interest thereon and costs at the present juncture.

In view of the conclusions drawn by us, hereinabove, there can be no doubt, whatsoever, about the relationship between the petitioners and respondents No.

5 to 9. The petitioners are tenants under respondents No. 5 to 9. There can also be no doubt about the fact, that the petitioners had failed to tender any rent before the Assistant Collector, Ist Grade, Karnal, when an ejectment application was filed by respondents No. 5 to 9, or at any time thereafter. This factual position stands acknowledged, even at the hands of the learned counsel for the petitioners. In view of the acknowledged factual position, we are satisfied that the petitioners deserve to be ejected from the suit land forthwith. Ordered accordingly.

In the facts and circumstances of this case, we are satisfied that exemplary costs should be imposed on the petitioners for misusing the process of law to their own benefit. The petitioners had been blatant in asserting, that they failed to tender any rent since 1979, although, they were in possession of the suit land. Their claim for the purchase of the land in question was dismissed by the Civil Courts. This position attained finality as far back as in the year 1986, when RSA No. 716 of 1986 was dismissed by this Court on 16.5.1986. Although, the petitioners knew, that they were not owners of the land in question, they continued to trespass over it. They denied the claim at the hands of respondents No. 5 to 9 so much so, that they did not consider it appropriate even to tender rent. As of now, even if the acknowledged stance adopted by the learned counsel for the petitioners, is taken on its face value, the petitioners have been in continuous possession of the suit land since 1979, without paying even a single Rupee towards rent. Even if, we assume that the rate of rent was Rs. 10,000/ per acre per year (although it must really be much more) rent payable by the petitioners would be at least Rs. 1,00,000/ a year. The petitioners have failed to pay rent for a period of 29 years. They are, therefore, liable to pay rent alone to the tune of Rs. 29 lacs. While determining the liability of the petitioners, one is liable to take into consideration the component of interest also, but while disposing of the instant writ petition, we do not desire to take the same into consideration. Additionally, for misusing the process of law, the petitioners have made themselves liable to costs. We hereby assess the said costs at Rs. 10,000/. The aforesaid total component of costs come to Rs. 29,10,000/ (29,00,000/ + 10,000/). The petitioners shall pay the costs assessed, hereinabove within three months from today. It needs to be clarified, that we have not required the petitioners to pay arrears of rent or interest thereon. It is only in equity, that while determining the component of costs, we have assessed the rental value of the land, which remained in continuous unauthorised occupation of the petitioners (from the year 1979 onwards).

The instant writ petition is dismissed in the aforesaid terms.