
(2004) 01 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 749 of 1982

Jit Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80(1)

Citation : (2004) 3 CivCC 261 : (2004) 138 PLR 150 : (2005) 1 RCR(Civil) 558

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Gaurav Chopra, for the Appellant; Sandeep Singh, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is plaintiffs appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity "the Code") challenging the judgment of reversal dated. 3.2.1982 passed by the learned Additional District Judge, Ferozepur. The learned Additional District Judge has dismissed the suit filed by the plaintiff/appellants, which was decreed in favour of the plaintiff-appellants by the Sub Judge, IIInd Class, Ferozepur.

2. Plaintiff-appellants had filed Civil Suit No. 93 dated 16.5.1979 seeking permanent injunction restraining the defendants-respondents from interfering with their lawful possession in respect of the suit land. It was further claimed that they have been cultivating the land in dispute as permanent lessees of defendant-respondent No. 1 and paying the leased money to them. Asserting that they were Majbi Sikhs, the plaintiff-appellant have averred that on account of their long possession of 15 years they had made the land fit for cultivation by spending huge amount and they were also entitled to get the land allotted under the Punjab Package Deal Properties (Disposal) Act, 1976. It was however, admitted that the suit land belonged to Provincial Government who has threatened to dispossess them forcibly.

3. In the written statement various preliminary objections have been taken by the defendant-respondents, which includes that the plaintiff-appellants do not have locus standi to file the present suit. It was also asserted that no notice u/s 80 of the Code has been served and in the absence of notice the Civil Court has no jurisdiction. The land has been claimed to be the property of the state which would attract the application of Public Premises (Eviction and Rent Recovery) Act, 1963 (for brevity "1963 Act"). The suit was also said to be barred by the principles of res judicata. The possession of the plaintiff-appellants in respect of the suit land was, however, not disputed but it was asserted that they were not lessee. It was further averred that they were in unauthorised possession as the land was never leased out to them by the State Government, therefore, they are not entitled to claim any relief. It was claimed that the defendant-respondents were competent to dispossess the plaintiff-appellants.

4. On the basis of the pleading of the parties, the following issues were framed :-

1. Whether the plaintiffs have no locus standi to file the present suit? OPD
2. Whether no notice u/s 80 CPC has been served upon the defendants. If so, its effect? OPD
3. Whether the Civil Court has no jurisdiction to entertain and try the present suit in view of the provisions of the Public Premises (Eviction & Rent Recovery) Act? OPD
4. Whether the suit is barred by principle of res judicata? OPD
5. Whether the plaintiffs are in possession of the land in suit. If so, in what capacity? OPP
6. Whether the plaintiffs are entitled to the injunction prayed for? OPP
7. Relief.

5. The trial Court decreed the suit of the plaintiff-appellants by deciding all the issues in their favour. However, the learned Additional District Judge dismissed the suit on the ground that the suit was not maintainable as the mandatory provisions of Section 80 of the Code providing for issuance of notice before the institution of the suit were not complied with nor any leave of the Court was obtained nor granted. The view of the Additional District Judge in this regard reads as under:

"The learned Government Pleader first questioned the correctness of finding of the trial court regarding the issue of notice u/s 80 CPC. Admittedly, no notice was served. The respondents made an application under Sub-section (2) of Section 80 C.P.C. for permission to file the suit without serving the statutory notice. However, the court did not pass any order and proceeded with the matter. It is very clear to me that the Provisions of Section 80 requiring the issue of notice before the institution of suit are of mandatory nature and no suit could be filed without the issue of notice to obtain an urgent and immediate relief with the

leave of the Court. The fact remains that no leave having been granted, the suit could not be held competent. The mere fact that the court continued the proceedings cannot be interpreted to mean that the permission so required was actually granted in as much as the matter having been put to an issue had to be decided ultimately. Thus, I am of the opinion that the suit was liable to be dismissed in view of the said omission."

6. Even on merit, the Additional District Judge held that by no stretch of imagination the plaintiff-appellants could be considered as lessee. The view of the Additional District Judge in this regard reads as under :

"Coming to merits Shri Vas Dev DW1 deposed that in 1974-75, the suit land was auctioned on lease basis in favour of the respondents for Rs. 1220/- but in the year 1975-76, the Collector Ferozepur did not approve the auction, so that the possession of the respondents was rendered illegal in the eyes of law. There is no evidence of payment of lease money by the respondents since after the year 1974-75. They could, therefore, not be treated as lessees despite the fact that in the revenue documents. They had been indicated to be so far some years. The foundation of the claim could only be that the respondents had purchased the lease hold rights for the subsequent years also which is not the case. The land in dispute is owned by the Government and it is understandable that the respondents would be evicted only by virtue of the provisions of Public Premises (Eviction and Rent Recovery) Act and not by force. By doing so, the appellants would not be working any injury upon the respondents."

7. Shri Gaurav Chopra, learned counsel for the plaintiff-appellants has argued that the plaintiff-appellants had filed an application u/s 80 (2) of the Code for obtaining leave of the Court to institute the suit without serving any prior notice as relief of urgent nature was prayed for. According to the learned counsel even if no order has been passed on the afore-mentioned application it should be implied that the leave was granted and it cannot be held that the suit was not maintainable on that account. Learned counsel has maintained that in the absence of grant of leave to file the suit the Court was under obligation to pass an order returning the plaint to the plaintiff-appellants so that the plaintiff-appellants could have either availed any other remedy or rectified his mistake. In support of the proposition that implied leave should be deemed to be granted, the learned counsel has placed reliance on two judgments in the cases of T.V. Parangodan Vs. District Collector, Trichur and Others, and Janak Raji Devi Vs. Chandrabati Devi and Another, . Another submission made by the learned counsel is that even a trespasser cannot be evicted without complying with the due process of law. In support of his submission, he has placed reliance on two judgments of the Hon"ble Supreme Court in the cases of Mohan Lal and Ors. v. The State of Punjab and Ors. 1971 P.L.J. 339 and M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, . Me has also referred to the judgments of this Court in the cases of Kanhiya v. Gram Panchayat, Jorasi Kalan 1981 P.L.J. 252 and Santa Singh v. State of Punjab 1971 P.L.J. 410.

8. Shri Sandeep Jain, learned State counsel has on the other hand argued that the provisions of Section 80 of the Code are mandatory in character and no Civil Court could assume jurisdiction unless a notice u/s 80 of the Code has been issued or leave has been granted by the Court permitting the plaintiff to institute a suit. According to the learned counsel, no such order is available on record showing that any such leave has been granted.

9. Learned counsel has further argued that auction for the lease held for the year 1975-76 was not approved by the Collector, Ferozepur and therefore, the possession of the plaintiff-appellants has been rendered illegal in the eyes of law. Even for the previous year there was no evidence of payment of lease money by the plaintiff-appellant. Learned counsel has maintained that the plaintiff-appellants could not be treated as lessee after the year 1974/75. Me has further urged that against the true owner like the defendant-respondents the plea of due process of law cannot be raised.

10. Having heard the learned counsel at a considerable length and perusing the record I am of the considered view that this appeal is liable to be dismissed because Section 80 of the Code is mandatory in character. It is provided by Section 80 that no suit against the government or a public officer could be instituted until the expiration of two months next after the notice in writing has been delivered to the government or a public officer concerned. However, Sub-section 2 of Section 80 of the Code provides that in order to obtain an urgent or immediate relief against the government or any public officer the suit could be instituted with the leave of the Court without serving any notice as contemplated by Sub-section (1) of Section 80 of the Code. The afore-mentioned question came up for consideration before this Court in the case of K.K. Sharma Vs. Punjab State and Others, and the view taken by this Court is that the trial Court is required to pass a specific order on the application filed by the plaintiff-appellant along-with the suit for granting leave to institute the suit without serving notice as contemplated by Sub-section (1) of Section 80 of the Code. Admittedly, no order has been passed by the trial Court granting leave to the plaintiff-appellants to institute a suit without issuing notice tinder Sub-section (1) of Section 80 of the Code. Such an order cannot be deemed to have been passed merely because the suit has been entertained by the trial Court because the request for granting leave would only flow from the specific order which is also subject to review by the superior Court. It is further pertinent to mention that in the present case Issue No. 2 has been framed as to whether any notice u/s 80 of the Code was served upon the respondents and what would be its effect. Therefore, the view taken by the learned Additional District Judge is liable to be affirmed.

11. The finding of the Additional District Judge that the land is owned by the respondent-State has not been disputed before me and all that has been argued is that the plaintiff-appellants should be evicted only in due process of law. The learned Additional District Judge has held that plaintiff-appellants are liable to be

evicted by invoking the provisions of the 1963 Act which satisfied the requirement of due process of law. The judgments in the cases of Mohan Lal and M.K. Setty (supra) relied upon by the learned counsel do not lay down anything except following of due process of law. The learned Additional District Judge has already issued those directions. Therefore, the appeal is liable to be dismissed.

12. For the reasons recorded above, this appeal fails and the same is dismissed.