

(1952) 04 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Revenue Appeal No. 12 of 2008

Kanshi Bam and others

APPELLANT

Vs

Bhagtu and others

RESPONDENT

Date of Decision : 23-04-1952

Acts Referred:

Citation : AIR 1952 J&K 44

Hon'ble Judges : J.N.Wazir, C.J and Jia Lal Kilam, J

Bench : Division Bench

Advocate : Ishwar Singh, Advocates appearing for the Parties

Judgement

Wazir, C. J.

[1] Bhagtu and others made an application under s. 57A, Tenancy Act to the Collector Kathua for summary reinstatement on half portion of

Khasra NOS. 596, 597, .593, 599, 600, 601r 602 and 607/2. In the application they alleged that they have been in possession of half portion of

these Khasra numbers as tenants at will from S. 2001 up to s. 2007 and in Kharif 2007 they have been forcibly dispossessed by Sant Earn and

others appellants. The Collector sent this application to Tehsildar Jasmergarh for enquiry. Before the Tehsildar the respondents stated that the

Patwari has wrongly entered the applicants as being in possession of half portion of the Khasra numbers mentioned above and that the applicants

have never been in possession of the land in dispute. The appellants alleged that they are entered as occupancy tenants in the Revenue papers over

half portion of the land comprised of the Khasra Numbers stated above and that the applicants not being their tenants cannot seek restoration of

possession under s. 57A, Tenancy Act. The Tehsildar found that the applicants

had been in possession of half portion of the land from S. 2001

to S. 2007 and are entitled to be reinstated. The collector accepted the findings of the Tehsildar and ordered restoration of the possession to the

applicants. The applicants were accordingly put in possession of the half portion of the Khasra Numbers mentioned in their application.

[2] Against this order Sant Ram and others who are entered as occupancy tenants over half portion of the land, have come up in appeal to this

Court. It was argued on behalf of the appellants that S. 57A, Tenancy Act would not apply to the case of the respondents inasmuch as they were

not recorded as tenants under the appellants. The main question for consideration in this appeal, therefore, was whether the respondents who are

not recorded as tenants under the appellants had a right to move the Deputy Commissioner under S. 57A, Tenancy Act, for being reinstated on the

land from which they had been dispossessed. The law point raised by the appellants was of great importance and as this point was likely to be

raised in many other cases, the appeal was referred for decision to a Division Bench.

[3] Mr. Ishwar Singh Advocate appears on behalf of the appellants and has argued that the appellants are entered as occupancy tenants in respect

of half portion of the Land in dispute. The respondents are not their tenants and they have been dispossessed of their holding by persons other than

the persons admitted to be, or recorded as, landlords and they could not be reinstated under s. 57A, Tenancy Act.

[4] It is a common ground between the parties that Bhagtu and others applicants respondents are not entered as tenants under Sant Earn and

others appellants. The entry in the Fard Girdawari shows that they are in possession as tenants at will over half portion of Khasra numbers stated in

the application along with Sant Ram and others who are recorded as occupancy, tenants over the other half. Section 57A has been inserted under

S. 57 in the Tenancy Act by a recent amendment which came into force in S. 2005. From the scheme of the Act, it appears that s. 57A has been

incorporated in order to protect a tenant from being ejected before enquiry is held and he is declared as a protected tenant. Section 50, Tenancy

Act, gives relief to a tenant who has been wrongfully dispossessed or ejected otherwise than in execution of a decree or in pursuance of an order

under s. 49 or s. 50, Tenancy Act. Section 57 provides a summary reinstatement of a tenant who has been wrongfully ejected during the settlement

operations. Section 57A gives relief to a tenant who has been dispossessed otherwise than in due course of law before his rights of protected

tenancy are determined. It would be clear from the above provisions that protection is given to a tenant from being arbitrarily dispossessed by the

landlord. The legislature has particularly used the word "tenant" in s. 57A who may apply to the Collector of the District in which the tenancy is

situate for summary reinstatement on any land from which he has been ejected.

[5] The learned counsel for the respondents argued that the protection given to the tenant is against any one who may or may not be a landlord.

We do not agree with him in the interpretation sought to be placed on the provisions of S. 57A. The use of the word "tenant" in S. 57A, Tenancy

Act, clearly indicates that the protection is given to the tenant only against a landlord and not against a trespasser. Tenancy Act governs the

relationship of the landlord and tenant alone. Section 84, Tenancy Act, enumerates all those applications and proceedings which can be

dispossessed of by the Revenue officers alone and civil Courts' jurisdiction is totally barred in regard to those proceedings. Clause (g) of S. 84

deals with applications made under S. 57 by a tenant wrongfully dispossessed. In s. 57 although there is no mention of the word landlord yet the

tenant is given protection only against the landlord and not against any one else. Similarly in S. 57A, Tenancy Act, summary reinstatement can be

ordered in favour of the tenant if he has been dispossessed otherwise than in due course of law. The tenant cannot avail of s. 57A, Tenancy Act if

he is dispossessed by a person other than a landlord. As S. 57A has been inserted in the Tenancy Act of the State and no such provision is found

in any Tenancy Act in other parts of India, so rulings on all force are not available, but there are cases of the Punjab High Court in which it has

been held that a suit for recovery of possession by occupancy tenant, who has been illegally dispossessed by person other than the landlord.

Would be cognizable by a civil Court. In Revenue Court the suit by an occupancy tenant would lie only against the landlord and not against a

person other than a landlord as under s. 50 which, corresponds to s. 56 of our Tenancy Act, protection is given to a tenant only against the

landlord and not against any one else. Reliance may be placed on Mian Singh v. Fatha, 3 Pun. Re. 1889 and Kesar Singh v. Mangal Singh, 84 Pun.

Re. 1913.

[6] We are, therefore, of opinion that application under s. 57A can be filed only if a tenant is dispossessed by a landlord otherwise than in due

course of law, but if a tenant is dispossessed by a person other than the landlord he cannot invoke S. 57A, Tenancy Act, in order to regain his

possession.

[7] It is argued on behalf of the respondents that they were in rightful possession of the property before they were dispossessed by the appellants.

They have got back the possession by the order of the collector which is ultra vires and illegal. In other words it is argued that a rightful claimant

has got the possession of the property and it will not be just and equitable that a rightful claimant should be dispossessed by the order of this Court

in appeal.

[8] The appellants have admitted in their objections that they are not the landlords in respect of half of the share of land of which they had taken

possession. They admit that they took possession of the lands as trespassers. Under the order of the Collector the trespassers have been

dispossessed and the respondents who are admittedly tenants at will have been put in possession. The respondents have no doubt better title to the

possession of the land than the appellants. It will not be equitable for this Court to order restoration of the possession to the trespassers who admit

themselves as such. In case the appellants think that they have better title to be in possession of the land in dispute than the respondents, they may,

if so advised, seek their remedy in the civil Court.

[9] This appeal is accordingly dismissed but we leave the parties to bear their own costs in this Court.

[10] B/K.S. Appeal dismissed.