
(2000) 07 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2133 of 1987

Narain Dass (through his L.R.S.)

APPELLANT

Vs

Jai Kishan

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Citation : (2000) 126 PLR 786 : (2000) 4 RCR(Civil) 272

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : R.C. Dogra and Sushil Dogra, for the Appellant; P.S. Bawa, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Jai Kishan son of Tara Chand filed suit for declaration against Narain Dass and others to the effect that the order dated 22.11.1983 of the Financial Commissioner, Punjab, Chandigarh exercising the powers of the Central Government u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter called the Act, divesting him (plaintiff) of his possession over 3 standard acres of land allotted to his father- Tara Chand (deceased in village Nurpun Bet, Tehsil and District Ludhiana vide order dated 19.3.1980 of Managing Officer, Ludhiana is arbitrary, void, nullity, inoperative and without jurisdiction being inconsistent with the provisions of the Act and as such not binding on him. It is alleged in the plaint by Jai Kishan that his father Tara Chand owned rural agricultural land in village Kadarbad Tehsil Phalia, District Gujrat, Pakistan. He left that land on the partition of the country. In lieu of that land, he was entitled to the allotment of 3 standard acres, 9 units of agricultural land. The entire land belonging to the plaintiffs father in Pakistan stood mortgaged with plaintiffs uncle Narain Dass for Rs. 800/- only. The land belonging to Narain Dass stood mortgaged with one Jai Gopal for Rs. 2200/-. In lieu of the land left behind in plaintiffs father was allotted 3 standard acres, 9 units of land in village,

Chaunta, Tehsil and District, Ludhiana in the year 1950. Plaintiff's uncle Narain Dass had also been allotted land in village Chaunta. Plaintiffs father had settled the mortgage debt with plaintiffs uncle Maraom Dass by surrendering his share in the Bagicha abandoned in Pakistan.

It is further alleged in the plaint that in view of family settlement, Narain Dass neither took possession of the land allotted in village, Chaunta nor did he make any application for the adjustment and settlement of the mortgage debt under the provisions of the Displaced Persons (Debts Adjustment) Act, 1951. Plaintiffs father remained alive up to the year, 1967. During his life time, Narain Dass never claimed mortgaged debt. Subsequently the allotment made in village, Chaunta was cancelled by the Department and fresh allotment was made in the name of plaintiff s father in village Narpur Bet on 19.3.1980. Plaintiffs uncle Narain Dass whom land had been allotted in village, Chaunta, which stood mortgaged with Jai Gopal neither gave possession of the land to Jai Gopal nor paid him the mortgage debt. Instead, he disposed of his land without paying the mortgage debt. Application made by V.N. Malhotra son of Jai Gopal to the Managing Officer for the recovery of the mortgage debt with interest was filed. Similarly application submitted by Narain Dass to the Managing Officer claiming allotment of the land in lieu of the land mortgaged with him was filed. Plaintiff in good faith and having love and affection for his uncle Narain Dass deposited Rs. 1000/- in his name in the Government Treasury vide challan dated 18.4.1980. Although Narian Dass was not entitled to recover the amount as he had not filed any application under the Displaced Persons (Debts Adjustment) Act, 1951. This amount was actually deposited by him in the Parcha Tusdeq, that amount is still intact and Narian Dass can withdraw it from the Treasury V.N. Malhotra son of Jai Gopal did not further pursue the matter. Narain Dass filed an appeal before the Settlement Commissioner Punjab, Jalandhar ignoring the mortgage amount deposited into the Government Treasury Ludhiana in his name. Appeal filed by Narain Dass was dismissed by the Settlement Commissioner vide his order dated 19.11.1981. Application made by Narain Dass u/s 33 of the Act was accepted by the Financial Commissioner (Revenue) Punjab, Chandigarh as delegate of the Central Government on 22.11.1983 and Narain Dass was ordered to be put in possession of the land allotted in the name of plaintiff s father in village Narpur Bet. Plaintiff has challenged the legality of the order dated 23.11.1983 of the Financial Commissioner Punjab exercising the powers of the Central Government saying that it is misconceived, arbitrary, illegal, without jurisdiction, inoperative and inconsistent with the provisions of the Act and has no effect on the rights of the plaintiff. There is no provision in the Act under which the Rehabilitation Authorities are competent to give possession of the land allotted to a displaced person, to a mortgagee of the land in Pakistan. For the settlement and adjustment of mortgage debts between the displaced mortgagors and mortgagees the Central Government enacted a special Act known as Displaced Persons (Debts Adjustment) Act, 1951, he could not claim relief under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954

after lapse of 30 years. The Displaced Persons (Compensation & Rehabilitation) Act, 1954 categorically excludes claims of the mortgagees from its purview and as such there is no provision either in the Act or the rules framed thereunder to give compensation to displaced mortgagees. Financial Commissioner could not direct that Narain Dass be put into possession of the land allotted to the plaintiff's father Tara Chand without recourse to the provisions of the Act. Narain Dass-defendant if he had any claim as mortgagee over the land allotted in favour of plaintiff's father, he should have made application under the Displaced Persons (Debts Adjustment) Act, 1951 and obtained decree from the Tribunal under that Act. In the absence of any decree from the Tribunal in favour of Narain Dass, Financial Commissioner could not arbitrarily order that Narain Dass be put in possession of the land allotted to the plaintiff.

2. Narain Dass-defendant contested the suit of the plaintiff. It was urged that the entire land belonging to plaintiff's father in Pakistan was mortgaged with him (Narain Dass) with possession for Rs. 1800/- and not for Rs. 800/-. It was denied that plaintiff's father settled mortgage debt with Narain Dass by surrendering his share in the Bagicha left behind in Pakistan. It was denied that he did not make any application for the adjustment and settlement of the mortgage debt. There was no family settlement entered into between him and plaintiff's father as alleged. It was denied that he never claimed mortgage debt during his life time. He has all along been demanding mortgage debt from the father of the plaintiff and from the plaintiff but they had been putting off the matter on one pretext or the other. Allotment made in village, Chaunta was cancelled by the Department. Fresh allotment was made in the name of plaintiff's father on 19.3.1980 in village Nurpur Bet, Tehsil Ludhiana. First allotment was got cancelled by the plaintiff malafide and dishonestly in order to defeat his mortgage claim. He (Narain Dass) on coming to know about the fresh allotment immediately moved application with the Tehsildar (Sales) for transferring possession as mortgagee. It was denied that the land of the defendant in village, Chaunta stood mortgaged with Jai Gopal with possession. Jai Gopal was not entitled to any land. It was denied that the land of the defendant was sold without paying mortgage debt. It was denied that Narain Dass was not entitled to recover the amount. It was denied that Narain Dass withdrew Rs. 1000/- from the Treasury. The order passed by the Financial Commissioner dated 22.11.1983 exercising the powers of the Central Government u/s 33 of the Act is legal, valid, operative, effective and binding on the plaintiff. It was denied that Narain Dass could not claim relief under the provisions of the Displaced Persons (Compensation & Rehabilitation) Act, 1954.

3. On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the impugned order of the Financial Commissioner is arbitrary, illegal, void and inoperative? OPP.
2. Whether the suit in the present form is not maintainable? OPD.

3. Whether the suit is within time? OPP.
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
5. Whether the Civil Court has no jurisdiction to entertain the present suit? OPD.
6. Whether the suit is bad for non-joinder of necessary parties? OPD.
7. Relief.

4. Vide order dated 14.12.1984, Subordinate Judge III Class, Ludhiana decreed the plaintiffs suit for declaration that the order dated 22.11.1983 of the Financial Commissioner Punjab, Chandigarh directing that Narain Dass be given possession of the land as mortgagee which/has been allotted to Jai Kishan is null and void, being in-consistent with the provisions of the Act and not binding upon him (Jai Kishan) in view of his finding that the impugned order was without jurisdiction and void and the remedy of Narain Dass was to seek relief from the Tribunal Constituted under the Displaced Persons (Debt Adjustment) Act, 1951 or through filing suit for possession in civil court. Civil Court was found to have jurisdiction as the civil Court's duty was to see that the order passed by any authority constituted under an Act of legislature was within the four-corners of that Act and not beyond the four-corners of that Act. It was found," Whether the mortgagee was entitled to possession of the land allotted is a matter which could not be decided under any provisions of the Act." Plaintiffs suit was found within time, plaintiffs suit for mere declaration without consequential relief was found to be maintainable. It was found that the impugned order was without jurisdiction as there is no provision in the Act which authorized the delivery of possession of the land allotted to a displaced person to the mortgagee of the land left behind in Pakistan.

5. Narain Dass-defendant went in appeal, which was dismissed by the Additional District Judge, Ludhiana vide order dated 17.1.1987.

6. Still not satisfied, Narain Dass-defendant has come up in further appeal to this Court. I have heard the learned counsel for the parties and have gone through the record.

7. Tara Chand was allotted land in village, Chaunta, Tehsil Ludhiana in lieu of the area left behind by him in Pakistan. This allotment was subsequently cancelled. Jai Kishan got allotment of land equivalent to 3 standard acres in village Nurpur Bet vide order 19.4.1980 of Naib Tehsildar (Sales)-cum-Managing Officer, Ludhiana. Narain Dass filed application on 22.3.1980 before the Assistant Registrar (L)-cum-Managing Officer, Punjab, Ludhiana saying that the land abandoned by Tara Chand in Pakistan stood entirely mortgaged with him but his name as mortgagee had been omitted to be mentioned in the goswara for allotment issued to the Managing Officer, Ludhiana. He, therefore, requested that this error may be rectified. Assistant Registrar (L)-cum-Managing Officer vide order dated 10.4.1980 sent the case to the Tehsildar Sales, Ludhiana for making

necessary correction in the goshwara allotment. Naib Tehsildar Sales vide order dated 17.6.1980 held that he could not take action for giving possession of the land to the mortgagee and if he (Narain Dass) had any objection, he may file an appeal before the competent authority. Narain Dass thereupon filed appeal before the Settlement Commissioner Punjab, Jalandhar who vide order dated 19.11.1980 rejected his claim of having become owner of the mortgaged land after lapse of 35 years from the date of mortgage as he had not filed any claim for allotment of land before 31.12.1963, nor got possession of the land allotted to Tara Chand in the year, 1950. Settlement Commissioner Punjab, Jalandhar allowed instead the request of Jai Kishan for redemption of the mortgage and determined the amount of Rs. 1680.00 as payable for redemption. Narain Dass went against the order dated 19.11.1980 of the Settlement Commissioner Punjab, Jalandhar before the Chief Settlement Commissioner, who vide order dated 19.11.1981 rejected the petition. Narain Dass then filed petition u/s 33 of the Act before the Financial Commissioner Revenue & Secretary to Government Punjab Rehabilitation Department exercising the powers of the Central Government u/s 33 of the Act. Vide order Ex. P-1 the Financial Commissioner Revenue & Secretary to Government, Punjab, Rehabilitation Department exercising the power of the Central Government u/s 33 of the Act allowed the petition and set aside the orders dated 19.11.1980 of the Settlement Commissioner and 19.11.1981 of the Chief Settlement Commissioner and directed that Narain Dass be given possession as mortgagee of the land allotted to Jai Kishan on the premise that Jai Kishan has nowhere denied the factum of mortgage of the land in dispute with Narain Dass. Narain Dass's statement that the entry regarding mortgage exists in the jamabandi record received from Pakistan had not been controverted at any stage. The plea of Jai Kishan before the Settlement Commissioner which he also repeated before the Chief Settlement Commissioner was that there was some settlement between his father - Tara Chand and Narain Dass who is his father's brother on the basis of which Tara Chand surrendered his rights in the Bagicha for the mortgage debt remained un-substantiated as no evidence had been brought on record to prove this alleged settlement. Financial Commissioner observed that the observation of the Chief Settlement Commissioner in the order dated 19.11.1981 that Narain Dass stood compensated with regard to his mortgage debt by a family settlement otherwise he would have raised his claim at the time when the first allotment had been made to the respondent was based on conjectures. Tara Chand had never got possession of the land allotted to him in 1950 which was subsequently cancelled. Narain Dass made application on 22.3.1980 for obtaining possession as mortgagee of the land allotted to Jai Kishan son of Tara Chand on 19.3.1980. There was thus no delay on his part in making the requisite application. Financial Commissioner observed that the proper course for the Rehabilitation Authorities was to put Narain Dass in possession of the land allotted to Jai Kishan as mortgagee. Jai Kishan would be free to make application for redemption of the mortgage in the competent Court or to raise the question about settlement of mortgage in a civil court, if so advised.

8. It was for Jai Kishan-plaintiff to prove that the mortgage debt due to Narain Dass had adjusted. No application was made by Tara Chand who was alive in the year, 1967 or after his death by Jai Kishan that the amount of mortgage debt be adjusted in view of family settlement. Narain Dass was a mortgagee with possession. Tara Chand was mortgagor. Narain Dass was entitled to the possession of the land allotted to Tara Chand in lieu of the mortgaged land left by him in Pakistan or that the mortgage debt had been adjusted and the allotment in favour of Tara Chand was free from encumbrance. It was for Tara Chand to prove so. Narain Dass stated that he was mortgagee with possession to the tune of Rs. 1800/-. This mortgage debt was never repaid either by Jai Kishan or by his father. No compromise took place between him and with Jai Kishan or his father Tara Chand. He made application for obtaining possession of the land allotted to Jai Kishan/Tara Chand, the moment, he came to know that he had been allotted land in lieu of his claim. He stated that he was never informed about the allotment of land in village, Chaunta by Tara Chand or Jai Kishan.

9. Narain Dass was thus entitled to the possession of the land as he was mortgagee with possession which was allotted to Tara Chand/Jai Kishan in lieu of the land abandoned in Pakistan.

10. Learned counsel for the appellant submitted that when the appellant was mortgagee with possession in Pakistan and the mortgage debt had not been repaid to him and that he was continuing as mortgagee, the lien on the land in his favour could not be obliterated. Learned counsel for the respondent submitted that the impugned order of the Financial Commissioner was illegal, null and void and without jurisdiction as section 33 of the Act does not authorize him to direct the allottee of the land to deliver possession of the land to the mortgagee. The Managing Officer has wrongly given possession to Jai Kishan. Narain Dass was entitled to possession. He had to be put in possession in accordance with Sections 9, 19 & 20 of the Act reading the Land Resettlement Manual, Para 17(1) at page 73 by Shri Tarlok Singh, ICS where on the subject of Mortgage Rights it has been recorded that where the mortgagor and the mortgagee of a piece of land situated in west Punjab are both displaced persons, in respect of land allotted to the mortgagor in lieu of the area mortgaged, possession will be given to the mortgagee, provided sufficient proof of the transaction exists. Displaced persons who held mortgages with possession of land belonging to the residents of West Punjab will be considered for temporary allotment of lands belonging to residents of East Punjab and mortgaged with possession to evacuees, now held on behalf of the evacuees by the custodian. Displaced persons whose lands in West Punjab were held on mortgage with possession by the residents of West Punjab (Muslims) will receive their allotments in East Punjab and the Patiala and East Punjab States Union, as if their allotments were not mortgaged, but subject to such adjustments and discharge of obligations as may arise in consequence of any Inter-Dominion Agreement.

11. It was held in *Om Prakash and Others Vs. Union of India (UOI) and Others*, that Section Officer-cum Managing Officer could therefore u/s 19 of the Act cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property was allotted. The Chief Settlement Commissioner had also the powers under sub-section (1) of Section 24 of the Act to call for the records at any time of the proceedings under the Act in which an officer specified therein has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

12. In this case on the basis of an oral verification some land was allotted to a person. Subsequently the Section Officer-cum-Managing Officer, relying on Fard Taqsim and Khasra Girdawari, discovered that an area of some acres was in excess of what the allottee was entitled to. He cancelled the allotment to the extent of the excess. The appellate authority in appeal against that order referred the matter to the Chief Settlement Commissioner who acting u/s 24 cancelled the order of allotment to the extent of the excess. He also relied on Fard Taqsim and Khasra Girdawari. The appeal was thereafter dismissed.

13. The Hon'ble Supreme Court held that the oral verification was subject to correction, variation and cancellation if revenue records justified such a course. The Fard Taqsim was an important revenue record and the Section Officer-cum-Managing Officer as well as the Chief Settlement Commissioner were right in placing reliance on the Fard Taqsim and Khasra Girdawari. Both of them had jurisdiction to cancel the allotment under Sections 19 and 24 respectively. The appellate authority was also right in referring the matter to the Chief Settlement Commissioner.

14. It is thus, clear that the Financial Commissioner was justified in ordering the Rehabilitation Authorities to put Narain Dass in possession of the land as mortgagee allotted to Jai Kishan Financial Commissioner had protected the rights of Jai Kishan also in as much as he had observed that he would be free to make application for redemption of the mortgage in the competent Court or to raise the question about the settlement of mortgage in a civil Court, if so advised. It was a matter that fell squarely within the jurisdiction of the Financial Commissioner Revenue & Secretary to Government, Punjab Rehabilitation Department exercising the powers of the Central Government u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 to give effect to the factum of mortgage recorded in the jamabandi that was received from Pakistan.

15. In view of what has been said above, this appeal succeeds and is accepted and the judgments and decrees passed by the two Courts below are set aside and the plaintiff-respondent's suit is dismissed without any order as to costs.