
(2009) 07 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 264 of 2005

Rai Jasbir Singh and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Citation : (2009) 4 RCR(Civil) 155

Hon'ble Judges : T.S.Thakur;CJ., J and Jasbir Singh, J

Advocate : Dr. Shyamliha Pappu, Senior Advocate with Mr. J.S. Udasi, Advocate.For the Respondents No. 1, Mr. Rameshwar Malik, Additional Advocate General Haryana.For the Respondents Nos. 3 to 9, Mr. M.L. Sarin, Senior Advocate with Mr. Vivek Sood, Advocate., Advocates for appearing Parties

Judgement

Jasbir Singh, J.—This appeal is a classic example of how a determined (chronic) litigant can frustrate rights of his opponent, by abuse of the legal process. The private respondents became owners of land measuring about 24 acres in the year 1972. They are out of possession, fighting litigation for the last about 37 years and yet not sure as to when they will get possession of their land.

2. The appellants have filed this Letters Patent Appeal against the judgment dated 25.5.2005, passed by a learned Single Bench of this Court, dismissing Civil Writ Petition No. 3105 of 1996, filed by them. In that writ petition, the appellants had laid challenge to the orders passed by the Assistant Collector, Collector, Commissioner, Financial Commissioner of State of Haryana (Annexure P1 to P4), ordering/ confirming their ejectment from the land comprised in Khewat No. 280 Khatoni No. 344, Khasra No. 25// 24, 25, 31//6, 7, 8, 9, 11, 12, 13, 14, 31//14, 15, 16, 17, 19, 20, 30//4, 5, 6, 7, 14, 15, 16, 17, 24//2, 25, situated in village Gumthala Garhu, district Kurukshetra.

Brief admitted facts

3. One Mann Singh was owner of the land measuring 250 kanals, which includes the land in dispute, situated in village Gumthala Garhu and Dhulgarh, district

Kurukshetra, State of Haryana. As per the provisions of Punjab Security of Land Tenures Act, 1953 (in short, the Act), a vast track of land, owned by him, was declared surplus. In the month of June 1955, Mann Singh leased out 568 kanals 12 marlas of land to appellant No. 1 Rai Jasbir Singh, for a period of 20 years i.e. upto Rabi 1975. Around 1958, Maan Singh sold 568 kanals 12 marlas of land i.e. the entire leased out land, to Dalip Singh, Dalip Kaur and Swaran Singh vide separate registered sale deeds. Mann Singh had two daughters, namely, Mohinder Kaur and Kirpal Kaur. Smt. Mohinder Kaur filed a Civil Suit for possession, by way of preemption, for the above mentioned land. Her suit was decreed in the year 1962. She was declared owner of the land measuring 568 kanals 12 marlas. In the year 1964/65, Maan Singh died. Out of land measuring 568 kanals 12 marlas, Mohinder Kaur made a gift deed of 13 acres of land to Gurdwara Bohli Sahib, Pehowa. She sold 10 acres of land to Niranjana Singh, Jarnail Singh and others (they are not parties to the present proceedings). Out of remaining 48 acres of land, she gifted 24 acres of land to her sister Kirpal Kaur in the month of June 1972. Private respondents, namely, Waryam Singh, Balwant Singh, Darshan Singh, Amarjit Singh and Dalip Singh, exchanged 24 acres of land with Smt. Mohinder Kaur and became owner/co sharers in the property, in dispute. It is also an admitted fact that during this entire period, appellant No. 1, namely, Rai Jasbir Singh remained in possession of 568 kanals 12 marlas of land as a lessee.

45. The private respondents, on 11.9.1974, filed an application for partition of the land, by separating their share, before the Assistant Collector Ist Grade Guhla (Annexure PA). That application was filed against Smt. Kirpal Kaur daughter of Mann Singh and Niranjana Singh etc. She failed to appear and was proceeded ex parte. After filing of this application, Smt. Kirpal Kaur sold 10 acres of land to appellant No. 1, who then moved an application on 27.5.1975 (Annexure PC) to become a party in the pending partition proceedings. His application was allowed vide order dated 30.5.1975 (Annexure PD) and the matter was adjourned to 16.6.1975 to file objection regarding proposed partition. On 16.6.1975, following order was passed by the Court of Assistant Collector Ist Grade Guhla :

"No objection has been filed against the plan J. Rai Jasbir Singh says that another Advocate from Kaithal is coming. But, he has neither filed any objection nor produced any power of attorney. Under these circumstances no more time can be given to the respondent. Plan J seen, accordingly mode of partition admitted to be correct. Therefore, partition is confirmed. File may be put up on 16.7.75 for partition deed. Applicant should file the requisite stamp papers."

Thereafter, on 5.8.1975, the Assistant Collector Ist Grade Guhla, passed the following order :

"The applicants have filed the application for partition of land in this Court on 25.7.74 with a prayer that aforesaid land is joint property of the partners and due to this reason, the applicants cannot take full benefit of this land and there

remains a dispute and as such separate khata should be formed in respect of the share of the applicants and the land should be partitioned. The land was partitioned as per rules, the detail of which is attached herewith. The orders were passed on 16.6.75. The respondents have not filed any appeal against the said orders in any higher Court and the period for filing the appeal has expired on 16.7.75. Therefore the Sanad is being prepared in compliance of the order dated 16.6.75. It is made clear that this partition shall come into effect w.e.f. 5.8.75."

Consequent thereto, Sanad Takseem was prepared on that very date, which has been put on record as Annexure R9/1. In their writ petition, grounds of this appeal, First Synopsis filed by the appellants, they have admitted the factum of effecting partition, however, subsequent thereto, they tried to wriggle out of the same by stating that partition was not as per rules and the land was not partitioned by metes and bounds.

Facts regarding Civil Suit filed by appellant No. 1

6. Record further reveals that instead of putting in appearance before the Assistant Collector Ist Grade, where partition proceedings were going on, the appellant Rai Jasbir Singh filed a Civil Suit on 9.1.1976, laying challenge to the order dated 16.6.1975, confirming partition proceedings, vide which matter was adjourned to 16.7.1975, for framing instrument of partition. In that suit, he claimed a 'decree for declaration' to the effect that land in dispute, was still jointly held by the parties, as the partition proceedings detailed in para No. 1 of the plaint were illegal, without jurisdiction and void. He prayed that orders passed by the Assistant Collector Ist Grade, confirming partition, be set aside. His suit was dismissed on 29.1.1980. He along with Kirpal Kaur went in appeal. During pendency of that appeal, Smt. Kirpal Kaur filed an application (Annexure PF) with a prayer that she did not want to proceed further with the appeal and her name be deleted from the array of the appellants. Appeal filed by appellant No. 1 was dismissed on 4.12.1981. He challenged the order, by filing RSA No. 615 of 1982 in this Court, which was also dismissed by the same learned Single Bench, who has passed the order impugned in this appeal, on 25.5.2005. As per information supplied, against that order, SLP filed by the appellants is pending in the Hon'ble Supreme Court.

Facts regarding ejectment proceedings initiated by the private respondents

7. On 14.7.1975, private respondents, being small land owners, filed an application in Form K1 (P1), as per the provisions of Section 9 of the Act against the appellants. The Assistant Collector, Kaithal allowed that application on 23.7.1976, ordering ejectment of the appellants from the land, in dispute and also awarded an amount of Rs. 20,000/ to the appellants, towards compensation for a Tubewell and a house constructed on the land, in dispute. Appellants went in appeal, which was allowed and matter was remitted to the Assistant Collector Ist Grade to determine following two points :

Firstly, what is the land owned by the petitioners and what is their share;

Secondly, the respondents be given chance to crossexamine the Executive Engineer, Pehowa.

8. During fresh hearing, many opportunities were given to the appellants to produce evidence etc. They failed to comply with the orders passed by the Court, rather they tried to prolong the matter, by raising frivolous objections and they were successful in keeping the matter pending before Assistant Collector Ist Grade till 11.7.1985, when finally, the Assistant Collector Ist Grade, Thanesar allowed application in Form K1, filed by the private respondents and ordered ejectment of the appellants from the land, in dispute.

9. To show determination of the appellants to frustrate efforts of the private respondents, to get possession of their land, it is necessary to note few paragraphs from the order, referred to above:

"Against this order of the Asstt. Collector, an appeal was filed before the Collector Kurukshetra. The appeal was accepted and the case was remanded for reconsidering the case on two points; firstly what is the land owned by petitioners and what is their share; secondly, the respondents be given chance to crossexamine the Executive Engineer, Pehowa. After the remand order, Assistant Collector Ist Grade, Kaithal called both the parties. According to the statement of the counsel for the petitioner dated 7.5.1977 following khasra Nos. i.e. khasra No. 31/18, 21, 22, 23 were excluded from the petition and respondents were directed to deposit the expenses for calling the Executive Engineer and the case was adjourned for 16.7.77 for 16.7.1977 the case was adjourned from 28.5.1977 at the request of respondents. On 28.5.77 as the witnesses have not come, the case was adjourned to 20.6.77 for the evidence of the parties. On 20.6.77 the case was adjourned to 5.7.77 and 3.8.77 the case was pending for proper order. On 3.8.77 the case was fixed for evidence of the petitioner for 22.8.77, on 22.8.77 as the Presiding Officer was on tour, the case was adjourned to 23.8.77 the case was being fixed for procuring the attendance of the witnesses. On 22.9.77 Sh.A.S.Malhotra, Executive Engineer, SYL., was present and the respondents took responsibility for paying the expenses themselves for 20.6.77. The respondents were asked to pay the expenses of the witnesses and crossexamine him but the respondents declined to pay the expenses of the witness and so counsel for the respondent was not allowed to crossexamine. On the same day one application on behalf of Swaran respondent was moved for amendment of written statement and the case was adjourned for reply and arguments on the application.

In between the respondent filed an appeal before Shri Chander Singh, IAS, Additional Collector, Kurukshetra against the order dated 22.9.1977. The same was dismissed by the Additional Collector vide his order dated 9.12.1977 and it was observed therein that if the respondents on 22.9.77 deposit the process and expenses for calling the witnesses, then they should be given a change to crossexamine the witness.

After receiving back the file the Assistant Collector, Kaithal the case was adjourned to 3.1.1978 for arguments on the application of Swaran and deposit of expenses for the witnesses. On 3.1.1978 the case was adjourned to 5.1.78 on the request of respondent No. 2. On 5.1.78 respondent No. 1 came present in the Court and told that they have carried a revision against the order of the Additional Collector dated 9.12.1977 before the Commissioner, Ambala Division. The case was adjourned to 12.1.78, then the case was adjourned to 25.1.78 on which date the same was adjourned to 30.1.78. On 30.1.1978 application of respondent No. 2 Swaran Singh was dismissed after hearing the arguments and it was directed that the respondents should deposit the expenses of the witnesses forthwith. The case was adjourned to 23.2.78 for the same. On 23.2.78 Shri A.S.Malhotra, Executive Engineer was present but respondents refused to crossexamine him. The witness was discharged. The case was adjourned to 9.3.78 for further proceedings.

The Commissioner Ambala Division vide his order dated 21.3.78 dismissed the revision of Swaran Singh in limine. After receiving the file, both the parties were called and both were present on 24.4.78 but the case was adjourned sine die due to the stay orders from the court of Financial Commissioner.

The Hon^{ble} Financial Commissioner also dismissed the revision of Swaran Singh on 25.7.79 and it was observed that the respondents are only interested in getting the case prolonged.

After receiving the files from the Court of Hon^{ble} Financial Commissioner, the counsel for the petitioner was present on 30.8.1979, and the case was being adjourned upto 4.10.1979 for the service of the respondents. On 4.10.1979 the case was transferred to the court of Assistant Collector Ist Grade Guhla due to Guhla being made Sub Division by that time. Both the parties were directed to appear there on 15.10.1979. Both the parties as per the directions appeared before that Court on 15.10.1979 and the case was fixed for evidence of the parties. On 16.11.1979 witness of the petitioner Malook Singh, Patwari (summoned witness) was present but at the request of the counsel for the respondents the case was adjourned to 22.11.1979 as he has not seen the file. On 22.11.1979 the evidence of Malook Singh was recorded and the case was adjourned to 30.11.79, 17.12.79 and 8.1.80 the case was adjourned to 18.1.80. On that the respondents moved an application for calling the Executive Engineer as witness which was dismissed on 28.1.1980. The evidence of the petitioner was closed on 4.2.80 and the case was fixed for evidence of the respondents on 18.2.80. On 18.2.80 respondent No. 2 moved an application for amendment of written statement which for reply and arguments was fixed for 22.2.80. On 22.2.80 the file was dispatched to the court of Collector, Kurukshetra.

On 8.7.80 the case was remanded by Collector, Kurukshetra with a direction to summon the Executive Engineer as witness. On 22.8.80 both the parties were present. The case was adjourned for reply and arguments on the application of Swaran Singh for 10.9.80. On 10.9.80 the application of Swaran Singh was

dismissed and against this order an appeal was filed in the court of Collector, Kurukshetra which was dismissed on 16.2.81. On 27.2.81 inspite of the directions respondents were not present and ex parte proceedings were taken against them and the file was sent to the court of Financial Commissioner on 31.3.81. Hon"ble Financial Commissioner dismissed the revision on 9.6.1981. On 3.5.82 ex parte proceedings against the respondents was set aside and the case was adjourned to 26.5.82 for evidence of the respondents. On 26.5.82 crossexamine of the Executive Engineer finished and the case was adjourned for remaining evidence of the respondents.

On 4.8.82 the evidence of the respondents was closed and the case was fixed for arguments on 8.9.82. On 8.9.82 an application for additional evidence of the respondents was dismissed. On 28.9.92 this case was dismissed in default and the file was sent to the Record Room. On 8.10.82 the petitioners moved an application for restoration of the original case but this case was transferred to this Court on the orders of Assistant Collector Ist Grade, Guhla as per the directions of the Collector, Kurukshetra which was received by this Court on 20.10.1982. This case was again sent to the court of Collector, Kurukshetra for deciding the application of restoration of the case and the case was restored vide orders dated 28.2.83. Against the order dated 28.2.83 Rai Jasbir Singh etc. filed an appeal before the Commissioner, Ambala Division and the same was dismissed by the Commissioner Ambala Division vide his order dated 6.6.84. The file was received on 17.8.84 and the case was fixed for consideration for 30.8.84 in the presence of both the parties. On 30.8.84 the case was adjourned for arguments. On 11.10.84 respondents moved another application for leading additional evidence on which Rs. 50/ as cost was imposed and the case was fixed for reply and arguments for 22.10.84. On 23.11.1984 after hearing both the parties, the application of respondents for additional evidence lead dismissed. Against this order the respondents filed an appeal before the Collector, Kurukshetra and the same was dismissed vide order dated 16.1.1985. On 12.2.85 Waryam Singh moved an application which was dismissed on 22.2.85. On 4.3.85 Waryam Singh moved an application which was dismissed on the same day after hearing.

On 29.5.85 the civil writ petition filed by Swaran Singh was dismissed."

8. Against order dated 11.7.1985, the appellants went in appeal, which was dismissed on 25.8.1986. They went to the Court of Commissioner, by filing second appeal, which was treated as a revision and was dismissed on 19.10.1988. Their further appeal/ revision was dismissed by the Financial Commissioner on 10.5.1995. Then they filed Civil Writ Petition No. 3105 of 1996, which was dismissed on 25.5.2005. Thereafter, this appeal.

9. It is necessary to note here that during this long period of more than three decades, the appellants remained in possession, under orders passed by the Civil Court(s) where partition proceedings were challenged and by this Court when RSA No. 615 of 1982 was admitted on 3.5.1982. When their RSA was dismissed,

they got order of status quo passed in this appeal on 23.12.2005.

10. It is an admitted fact that the appellants are continuing in possession over the land, in dispute, for the last more than three decades, without making payment of even a single pie to the real owners. By prolonged litigation, they have also ensured that order of partition passed in favour of the private respondents in the year 1975, be not implemented. After dismissal of their RSA in the year 2005, when proceedings were initiated to implement the orders passed by the Courts below, they again started the same process of litigation, which fact is evident from an application moved by them in this appeal, to get stay of the proceedings in the Courts below, initiated by the private respondents to get possession. They also moved an application to lead additional evidence, bringing on record those documents which were in their possession throughout but they never made any attempt to bring those documents on record. As is apparent from the orders passed by the Revenue Courts below, in ejectment proceedings, they even did not put on record copy of the sale deed, vide which, 10 acres of land was purchased by appellant No. 1 from Kirpal Kaur in the year 1975.

Heard counsel for the parties.

11. Ms Shaymlha Pappu, learned Senior Advocate has impugned the order passed by the learned Single Bench on 25.5.2005 and the orders of the Courts below primarily on the ground that the learned Single Bench and the Courts below have gone wrong in ordering ejectment of the appellants, who have become co sharers in the land, in dispute. In support, she made reference to the sale deeds through which land was purchased by the appellants from Waryam Singh, Balwant Singh and Dalip Singh private respondents in the year 1983 and 2001. (total 70 kanals 5 marlas). She further argued that the alleged order of partition, passed in the year 1975 is not binding upon the appellants. In the alternative, she contended that as the partition has not been effected by metes and bounds, as such, that order will not put an end to the joint ownership of the appellants and the private respondents. She prayed that the appeal be allowed by setting aside the orders under challenge.

12. Prayer made has vehemently been opposed by Mr. M.L. Sareen, learned Senior Advocate. He argued that the private respondents are small land owners. They have rightly filed application in form K1 as per the provisions of Section 9 of the Act for ejectment of the appellants from the land, in dispute. He further argued that objection, that there was no relationship of landlord and tenant, was not taken in the writ petition. By adopting delaying tactics, the appellants have frustrated rights of the private respondents. They have lost upto this Court in their challenge to the partition proceedings. He further argued that in all, the appellants had purchased 70 kanals 5 marlas of land from the private respondents out of total land in dispute, i.e. 190 kanals 15 marlas. They may retain any portion of land equal to 70 kanals 5 marlas and leave the remaining land for the private respondents. He further argued that once Sanad partition has

been prepared, it puts an end to the joint ownership of the parties. He also argued that regarding leading of additional evidence, in earlier bout of litigation, the appellants have failed upto this Court and now they can not be permitted to bring on record any document, which was in their possession throughout during the period of more than three decades.

13. After hearing counsel for the parties, in view of facts of this case, we are persuaded to say that the appellants have no case, rather by misusing process of law, they are trying to prolong their unauthorized possession over the land, in dispute. How they have frustrated rights of the private respondents to get their property and prolong their possession, indication is available from reading of the order passed by the Assistant Collector Ist Grade, Thanesar on 11.7.1985 (portion of which has been reproduced in earlier part of this order). Facts indicate that despite opportunities given, they have failed to even deposit expenses for summoning of a witness. They also laid challenge to the orders passed in that regard and went upto the Court of Financial Commissioner. Thereafter, they got an opportunity to do the needful, which, again they failed to avail. In the meantime, they also moved an application for leading additional evidence, which was dismissed and against that they came upto this Court and their writ petition was dismissed on 29.5.1985. They were successful in keeping the matter pending in the Court of Assistant Collector Ist Grade for a long period of about more than eight years. Their unreasonable conduct becomes apparent when in this Court they refused an offer made by counsel for the private respondents, to retain any portion of land (70 kanals) out of the land, in dispute, i.e. 190 kanals 15 marlas. This Court, vide order dated 12.12.2008, ordered that let the matter be put up before the Lok Adalat consisting of three Hon"ble retired Judges of this Court, to settle equities between the parties, however, the matter was returned to this Court, vide order dated 18.12.2008 by the Lok Adalat, after observing as under :

"Appellants are adamant to purchase the excess land in their possession, however, the respondents who are present, are not willing to sell the same. Appellants are not ready to surrender the excess land with them. No settlement between the parties present could be arrived at inspite of best efforts made by the Bench. Hence, appeal is returned to the High Court."

14. It appears that the appellants are hellbent upon to retain the land, that too without payment of any compensation for use and occupation for the last more than three decades.

15. Contention of Ms Shyamla Pappu, learned Senior Advocate that if during pendency of ejectment application, the tenant acquires right of ownership over some portion of the property, in dispute, ejectment order cannot be passed against him, is liable to be rejected.

16. It is apparent from the records that total land, in dispute is 190 kanals and 15 marlas. Out of that land, appellants had purchased only 70 kanals 5 marlas of

land during pendency of ejectment application against them. Admittedly, they have not become owners of the entire land, in dispute. Appellant No. 1 is a tenant on the entire property.

17. Under similar circumstances, dealing with a similar controversy, their Lordships of the Hon^{ble} Supreme Court, in *T. Lakshmipathi and others v. P.Nithyananda Reddy and others*, 2003(3) RCR(Civil) 305 : 2003(2) RCR(Rent) 117 : (2003)5 SCC 150 observed as under :

"In the case at hand, it cannot be denied, nor has it been denied, that the appellants herein are not purchasers of the entire ownership interest in the property. What they have purchased is interest of some out of all the coowners of the property. The interest of the respondent No. 1, whatever be its extent, has not come to vest in the appellants. The appellants have also acquired the tenancy rights in the property. Thus they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully.

It was further observed as under :

"In the facts and circumstances of the case, no defence or shelter is available to the appellants behind the plea that they have acquired interest of some of the coowners. The law as to coowners is well settled. Where any property is held by several coowners, each coowner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other coowners. One coowner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction. A coowner may, by an arrangement, expressed or implied, with his other coowners, possess and enjoy any property exclusively. Such a coowner can also protect his possession against the other coowners and if he is dispossessed by the latter, he can recover exclusive possession. (See *Jahuri Sah & Ors. v. Dwarika Prasad Jhunhunwala*,. It is beyond any controversy that on the death of late P. Narayana Reddy, his rights devolved upon the several heirs including respondent No. 1. Respondent No. 1 is the only male person in the body of the coowners, all others being women. It may be for this reason, or otherwise, that respondent No.1 was in possession of the property, through tenants, realizing the rent peacefully and with the consent, expressed or implied, of other coheirs of late P. Nithyananda Reddy. So far as respondents No. 2 and 3 are concerned, by operation of Section 116 of the Evidence Act, they were estopped from challenging or denying the ownership of respondent No. 1 and his rights in the tenancy premises. As held in *Vasudeo v. Balkishan*, the rule of estoppel between landlord and tenant continues to operate so long as the

tenancy continues and unless the tenant has surrendered possession to the landlord. The estoppel would cease to operate only on the tenant openly restoring possession by surrender to the landlord.

Neither respondents No. 2 and 3 nor their successors in interest or the persons claiming under them could have denied the title of respondent No.1 during the continuance of the tenancy and even thereafter unless they had restored possession over the tenancy premises to respondent No. 1. Looking at the status of the appellants whether as coowners or as persons inducted in possession by the tenants they have no legs to stand on. If other coowners could not have dispossessed respondent No.1 or demolished the property without the consent of respondent No.1 it is difficult to conceive how their transferees could have demolished the tenancy premises and raised their own construction over the land on which the tenancy premises stood earlier."

18. Similarly, in *Pramod Kumar Jaiswal and others v. Bibi Husn Bano and others*, 2005(2) RCR(Civil) 629 : 2005(1) RCR(Rent) 570 : (2005)5 Supreme Court Cases 492, their Lordships of the Hon'ble Supreme Court, when interpreting the provisions of Section 111 of the Transfer of Property Act, 1882, under similar circumstances, held that a tenant who has taken assignment of rights of a co owner cannot successfully raise a plea of determination of tenancy on the ground of merger. It was observed as under :

22. Here in this case, the lessee has acquired only the rights of certain coowner landlords and may have the right to work out his rights against the others. The right to work out his rights would not enable him to plead that the two rights in the whole of the property had come to vest in him. What is involved in the present case is the question whether on the acquisition of the rights of some of the coowner landlords by the tenant, there is an extinguishment of the tenancy by merger as postulated by Section 111 (d) of the Transfer of Property Act. T. Lakshmipathi answers that question and with respect, answers that question correctly.

23. A plain and grammatical interpretation of Section 111 (d) of the Transfer of Property Act leaves no room for doubt that unless the interests of the lessee and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, a determination of the lease cannot take place. On taking an assignment from some of the coowner landlords, the interests of the lessee and the lessor in the whole of the property do not become vested at the same time in one person in the same right. Therefore, a lessee who has taken assignment of the rights of a co owner lessor, cannot successfully raise the plea of determination of tenancy on the ground of merger of his lessee's estate in that of the estate of the landlord. It is, thus, clear that there is no substance in the contention of the learned counsel for the appellants that in the case on hand, it should have been held that the tenancy stood determined and the application of the landlord for a direction to the tenant to deposit the rent in arrears should have been dismissed. The position of the appellants as tenants

continue and they are bound to comply with the requirements of the Rent Control Act under which the order for deposit has been passed against them. The High Court has rightly dismissed the revision."

19. In view of above, it is not open to the appellants to say as they have become cosharers in the property, in dispute, as such, ejectment proceedings under the Act, cannot be initiated against them. As per Section 9 of the Act, a small land owner is entitled to eject a tenant from his land. In the year 1975, in appeal filed by the appellants, the appellate Court remitted the matter to the Assistant Collector Ist Grade, to determine as to whether the land owners (the private respondents) were the small land owners or not. The Assistant Collector Ist Grade, vide order dated 11.7.1985, gave a positive finding that the private respondents were the small land owners and were entitled to move application in form K1 under the Act. Neither before the Courts below, nor before us, any document has been shown, indicating to the contrary.

20. Not only this, admittedly, land was leased out to appellant No. 1 in June 1955 for a period of 20 years. Thereafter, as per the provisions of Section 40 of the Punjab Tenancy Act, 1887, he was liable to be ejected from the tenancy land. Admittedly, the appellants have not paid a single penny towards damages for use and occupation of the land in dispute, to the private respondents, for a period of more than three decades.

21. In view of above, we can safely say that the Courts below were correct in ordering ejectment of the appellants and the order passed by the learned Single Bench is perfectly justified.

22. Contention of counsel for the appellants that there was no partition of land between the parties, is liable to be rejected. In proceedings before the Civil Courts and in their RSA No. 615 of 1982, it was virtually admitted that the competent Court had ordered partition of the land, however, the proceedings were challenged by terming those as irregular/ illegal. Even in their writ petition, grounds of this appeal and synopsis of facts initially supplied, passing of final order of partition and issuance of Sanad Takseem were virtually admitted. Subsequent thereto, in a very unreasonable manner, an attempt was made to say that orders were illegal.

In RSA No. 615 of 1982 filed by the appellants, following order was passed by this Court on 18.5.1997 :

"Heard. The prayer made in the application is for vacation of the stay order dated May 3, 1982. The appellants filed a suit for declaration that the partition proceedings before the revenue court were without jurisdiction. Admittedly those proceedings culminated in an order for partition and Sanad has also since been issued. There is a mention made in the application of another bout of litigation between the parties with which we are not concerned. So far as the proceedings in the present appeal are concerned, had the partition proceedings been pending the appropriate ad interim relief which ought to have been granted was stay of

those proceedings but since order for partition has already been passed the only appropriate interim relief is that of dispossession.

Consequently, I do not find any merit in this application, which is dismissed. No costs."

23. Above said order clearly indicates that partition of the land and issuance of Sanad Takseem is not in dispute. Above said fact was confirmed by a Learned Single Bench of this Court when RSA No. 615 of 1982 filed by the appellants was dismissed on 25.5.2005.

24. We are of the opinion that by issuance of Sanad Takseem on 5.8.1975, land falling to the share of private respondents was separated from rest of the land owned by Smt. Kirpal Kaur and appellant No. 1. Merely because the land was not separated by metes and bounds, will have no effect, in view of peculiar circumstances of this case. The appellants did not allow the private respondents to implement the order of partition. Before the order could be implemented at the spot, they went to the Civil Court and got a stay order passed, which continued till dismissal of their RSA by this Court on 25.5.2005. Thereafter, in this appeal, they got status quo order passed on 23.12.2005. After dismissal of their RSA on 25.5.2005, the private respondents moved an application for implementation of the partition order. Again the appellants started the delaying tactics. As per the provisions of Section 122 of the Punjab Land Revenue Act, 1887, after issuance of the instrument of partition (Sanad Takseem), possession can be delivered to the owner, within a period of three years from the date when instrument of partition was prepared. That provision reads as under :

"122. Delivery of possession of property allotted, on partition. An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property."

25. Naturally, if a party to the partition, has got some stay order passed, when that stay order is vacated, the period will start running from the date the order is vacated.

26. In view of facts mentioned above, we dismiss this appeal and uphold order dated 25.5.2005 passed by the learned Single Bench. We also impose costs of Rs. 15,000/ on the appellants to be paid to the respondents in equal proportion.