
(1981) 09 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2441 of 1980

Rustam, etc.

APPELLANT

Vs

The Financial Commissioner, etc.

RESPONDENT

Date of Decision : 29-09-1981

Acts Referred:

Evidence Act, 1872 — Section 20

Citation : (1981) 09 P&H CK 0013

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. M.L. Sarin, for the Appellant; A.S. Tewatia with Mr. Madhu Tewatia, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—The petitioner-landlords impugned the order of the Financial Commissioner dated December 10, 1979 (Annexure P. 4) whereby the decree for the ejectment of respondents Nos. 5 to 11 has been set aside.

2. The relevant facts giving rise to this controversy are not much in dispute. The petitioners sought the ejectment of the respondents on the ground that they were small landowners-and-respondent No. 6, Bishan Dass, who was initially a tenant under them had sublet the land in question to the other respondents, that is, respondent Nos. 5 and 7 to 11. Respondents Nos. 6 to 11 admitted this claim of the petitioners while respondent No. 5, Dalsher, sought to contest it. The case pleaded by Dalsher while denying the claim of the petitioners to the effect that either they were small landowner or he himself was a sublessee, was that he had actually entered into an agreement with the petitioners to purchase the land under his tenancy, for a sum of Rs. 20500/- and had paid Rs. 6500/- to the petitioners by way of advance. What he sought to plead was that on account of this agreement between the parties, he was no more a tenant under the petitioners.

3. During the course of proceedings when evidence of the parties on both sides had concluded and the case was at the arguments stage, Dalsher respondent made an offer that in case the petitioners were prepared to take oath in the mosque after taking the holy Koran in their hands to the effect that they had not received the above noted advance money, then the claim of the petitioners be accepted and he be ejected from the suit land. The petitioner accepted this offer and as a result of this a binding contract came into existence between the parties. President of the Bar Association, Palwal, Mr. I.S. Tewatia, was appointed as a Local Commissioner by the trial Court and as per his report, the petitioners took the stipulated oath at the stipulated place in the stipulated manner. As a result of this the Assistant Collector accepted the claim of the petitioners and ordered the ejectment of the respondents including Dalsher respondent No. 5. This order of the Assistant Collector was affirmed by the Collector on appeal vide Annexure P. 2, with an added reason that no appeal before him was competent as the decree passed by the Assistant Collector in favour of the petitioners was a consent decree. This order of the Collector was again affirmed by the Commissioner on a revision petition filed by Dalsher respondent. However, as a result of a further petition to the Financial Commissioner, the present impugned order was passed holding that with the repeal of the Indian Oaths Act, 1873 in the year 1969, the taking of oath by the petitioners was of no consequence and that the Assistant Collector too had failed to record a categorical finding that the petitioners were either small landowners or respondent No. 6 had sublet the land in question to the other respondents. Taking this view of the matter, he set aside the decree of the Assistant Collector and those passed by the Collector and the Commissioner and remanded the case to the Assistant Collector to decide the same on merits.

4. The order of the Financial Commissioner, Annexure P. 4, is now impugned by Mr. Sarin, learned counsel for the petitioners on the ground that the learned Financial Commissioner has taken a wholly erroneous view of the relevant law. The learned counsel maintains that in spite of the repeal of the Indian Oaths Act, 1873, a binding contract had come into existence between the petitioner and Dalsher respondent and the fulfilment of that by the petitioners would amount to an admission of the claim on the part of Dalsher and the same admission would be admissible in evidence against him under S. 20 of the Indian Evidence Act. In support of this proposition of his, the learned counsel relies on a Full Bench judgment of this Court in *Mrs. Florabel Skinner and others v. Jai Bajrang Kala Mandir Ram Lila Mandal, Hissar* (1980) 82 P.L.R. 755, wherein the material observations read as follows:-

For the view I have already taken above, even if the 1873 Oaths Act was either not applicable in a given case or stood repealed or that there was no corresponding provision like section 9 to 12 thereof, in the 1969 Oaths Act, then in such a situation the offer and acceptance of the parties to abide by the statement of a party would amount to a contract and the statement made by a party on the basis of the contract would be conclusive for the decision of the suit.

In the face of this authoritative pronouncement, there is no manner of doubt that the oath taken by the petitioners in pursuance of the offer of respondent No. 5, amounted to an admission of petitioner's claim on his part which undoubtedly is conclusive against him. The learned counsel for the respondent, however, forcefully pleads that in spite of this admission, unless the Assistant Collector had recorded a positive finding to the effect that either of the two grounds pleaded by the petitioners had been proved on record, the order of ejectment of Dalsher respondent at least could not be passed on the basis of this admission alone. For this proposition, she has sought to make a reference to some judgments which I need not discuss in detail in view of the latest pronouncement of this Lordships of the Supreme Court on the point in issue This is what has been observed by their Lordships in this regard in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , while dealing with a similar argument:-

The consent decree for possession passed by the Court is not necessarily a nullity. If there was a clear admission in the compromise, incorporated in the decree of the fundamental facts that could constitute a ground for eviction u/s 12 or section 13, it will be presumed that the court was satisfied about the existence of such statutory ground and the decree for eviction though apparently passed on the basis of a compromise would be valid.

This view was later followed in Roshan Lal and Another Vs. Madan Lal and Others, wherein the following observations were made:-

If, however, parties choose to enter into a compromise due to any protracted litigating expenses, it is open to them to do so The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law..... The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.

In the light of these authoritative pronouncements, I am of the considered opinion that once the Court chooses to act on the basis of a compromise or consent given by a party to the litigation, then it has to be presumed that the case pleaded by the party in whose favour the order is passed has been accepted by the Court, fn other words, it would mean that the grounds pleaded by the petitioners for the ejectment of the respondents and particularly of respondent No. 5, would be taken to have been established. Therefore, the contention raised by the learned counsel for the respondents that unless the Court records a finding to the effect that the grounds pleaded by the petitioners have been established on record in so many words, no ejectment of Dalsher respondent could be ordered is not tenable.

5. Further the learned counsel for the petitioners point out that the Collector had dismissed the appeal of the respondents on an added ground; that no such

appeal was competent before him against a consent decree and this conclusion of his has neither been found to be wrong nor has been upset by the Financial Commissioner in any manner. The learned counsel maintains that in the absence of any such finding by the Financial Commissioner, the order of the Collector and affirmance thereof by the Commissioner could not be set aside. I, however, need not go into the detailed merits of this contention in view of the conclusion recorded by me earlier.

6. For the reasons recorded above, this petition succeeds and the impugned order of the Financial Commissioner dated December 10, 1979 (Annexure P. 4) is set aside but with no order as to costs.