
(1982) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2852 of 1981

Sadhu Ram and others

APPELLANT

Vs

Jagdish

RESPONDENT

Date of Decision : 11-05-1982

Acts Referred:

Citation : (1982) CurLJ 515 : (1982) PLJ 371 : (1984) RRR 508

Hon'ble Judges : G.C.Mital, J

Advocate : Mr. C. B. Goel, Advocate., Advocates for appearing Parties

Judgement

G.C. Mital, J. (Oral)

1. On 20th of December, 1980, Jagdish son of Baru filed a suit for permanent injunction against Sadhu Ram, Sat Pal son of Sadhu Ram and Yakub son of Ismael, restraining them from interfering with his peaceful possession of land measuring 18 Bighas 10 Biswas comprised in Khewat No. 1318, Khatauni No. 3162, Khasra Nos. 84 and 313 to 317. It was pleaded that Baru father of the plaintiff was in possession of the land in suit as a tenant under Sadhu Ram defendant and continued in possession thereof before it was declared surplus and after it was so declared, it was allotted to Baru on 3rd January, 1964. After Baru's death, the plaintiff came in possession as a son of a tenant and he was so recorded in the revenue records. It was pleaded that Sadhu Ram had filed an application for ejectment of the plaintiff under Section 14A(i) of the Punjab Security of Land Tenures Act, 1953, in which Sadhu Ram made a statement admitting that Baru was the original tenant on onethird batai and after his death, Jagdish plaintiff was his tenant on one third batai. That application was dismissed for nonprosecution on 16th December, 1980. It was also averred in the plaint that Sadhu Ram had filed a civil suit for permanent injunction as also for possession on 14th of September, 1979, in which it was alleged that the declaration of surplus area and the allotment of the same in favour of Murli, Jagdish and Jit, defendants Nos. 2 to 14 respectively, were illegal, and a decree for possession was sought against defendants Nos. 1 to 4 including Jagdish who

are arrayed as defendant No. 3 in that suit. Even in the prayer clause, a decree for possession as a consequential relief was claimed against defendants Nos. 2 to 4 who were admitted to be in possession of the respective portions allotted to them. Paragraph 8(ii) of that plaint is as follows :

"To Shri Jagdish, defendant No. 3. Agricultural land measuring 18 Bighas 10 Biswas comprising Khewat No. 1318, Khatauni No. 3161, Khasra Nos. 84(419), 313(216), 314(310), 315(30), 316(110) and 317(215)."

The contents of paragraph 9 of the plaint are as follows :

"That the aforesaid allotment is illegal, void and not binding upon the plaintiff. The plaintiff is entitled to get back the possession of the land from defendants Nos. 2 to 4."

The relevant relief clause is as follows :

" and for possession as consequential relief regarding land mentioned in para 8 of the plaint as against defendants 2 to 4 be passed in favour of the plaintiff".

Along with the suit, an application for temporary injunction was filed because it was apprehended that the landlord, his son and Yakub (their Karinda) wanted to take forcible possession of the land in possession of the plaintiff. The trial Court issued ex parte injunction but later on, by order dated 25th of April, 1981, vacated the same. Jagdish plaintiff went up in appeal and the learned District Judge by order dated 20th of November, 1981, allowed the appeal and issued temporary injunction restraining the defendants from dispossessing the plaintiff except in due course of law till the disposal of the suit. The learned District Judge found that, from the statement of Sadhu Ram made on 7th May, 1980, before the Assistant Collector as also from the ejectment application filed on 4th July, 1978, it was clear that Baru was the original tenant, on whose death Jagdish plaintiff became tenant under Sadhu Ram on onethird batai and was in possession throughout. It also came to the conclusion that Jagdish plaintiff was in possession as admitted by Sadhu Ram in his suit dated 14th of September, 1979, the relevant paragraphs of which have already been reproduced above, which clearly go to show that it was Jagdish who was in possession and none else. However, Khasra Girdawari entries which were got corrected by Yakub with regard to the land in dispute to show his possession, who was a Karinda/servant of Sadhu Ram and on whose statement the entries were corrected behind the back of Jagdish plaintiff, did not affect the rights of the plaintiff or the fact that he continued to be in possession. Accordingly, it was held that the correction of Khasra Girdawaris from Kharif 1977 to Rabi 1980 did not affect the rights of Jagdish plaintiff. The trial Court had placed reliance on the aforesaid corrected entries and, in my opinion, it was wrongly relied upon and the learned District came to the correct conclusion that even in those proceedings, Jagdish plaintiff was never made a party by Sadhu Ram and he obtained orders behind the back of Jagdish and, therefore, did not affect his rights. Against the aforesaid decision

of the learned District Judges granting temporary injunction, the three defendants have come to this Court in this revision.

2. After hearing the learned counsel for the parties and on consideration of the entire matter, I am of the view that the order of the learned District Judge is well based and calls for no interference.

3. Certified copies of the plaint filed by Sadhu Ram against the State of Haryana and the three allottees including Jagdish, the ejectment application under Section 14A(i) of the Punjab Security of Land Tenures Act, 1953, the statement of Sadhu Ram made in those proceedings and the final order dated 16th December, 1981, have been produced before me, which are already on the record of the trial Court. The facts which emerged therefrom clearly go to show that the land in dispute is in possession of Jagdish as a tenant on one third batai and that till 16th of December, 1980, no ejectment order had been passed against the tenant. Even till today, no ejectment order has been passed against the tenant. Consequently, the presumption would be of continuity of tenancy. It has never been the case of Sadhu Ram that Jagdish gave up tenancy rights voluntarily and he came into possession of the same. The correction of Khasra Girdawaris at the instance of Yakub from Kharif 1977 onwards, in no way, affects the rights of Jagdish, firstly because those entries were got corrected behind his back and, secondly, Khasra Girdawari entries are not record of rights and carries no presumption of truth under Section 44 of the Punjab Land Revenue Act. Yakub was the Karinda/servant of Sadhu Ram and it appears that he was set up by Sadhu Ram and Sadhu Ram appeared in those proceedings and requested for the correction of the Khasra Girdawari entries. Therefore, the corrected entries are waste papers and do not affect the admitted position that Jagdish has been in possession as a tenant. Whether the declaration of surplus area is correct or bad and whether the allotment in pursuance of the declaration of surplus area would stand or not, would again be not relevant because, admittedly, Jagdish is a tenant of Sadhu Ram on payment of one third batai and would continue to be the tenant till he is evicted in due course of law. If allotment made to him is valid, then on payment of the price, he would become owner thereof otherwise he would continue to be a tenant. Once the aforesaid facts are so patent on the record, I find that it is a fit case in which it would be wholly unnecessary to allow Sadhu Ram to drag on the suit in the trial Court as the same deserves to be decreed forthwith. Accordingly, I withdraw the suit from the trial Court for being finally disposed of by this Court.

4. I gave an opportunity to the learned counsel for the three defendant petitioners before me to raise all possible arguments for not decreeing the suit. In view of the admissions of Sadhu Ram defendant contained in his plaint dated 14th of September, 1979, as also his statement dated 7th of May, 1980, certified copies of which have been produced before me, he was unable to raise any meaningful argument. It is true that I am following a little unusual procedure in this case but the facts of the case are such that I do not consider that the poor

tenant should be dragged any further the way he is being dragged from one Court to the other with an effort that he may be forcibly dispossessed without due process of law. Therefore, in the interest of justice, I have followed this procedure.

5. From the facts stated above and the admissions of Sadhu Ram contained in his plaint and in his statement dated 7th of May, 1980, I conclude that Jagdish is his tenant on onethird batai and is in possession. The corrected Khasra Girdawari entries from Kharif 1977 onwards in no way militate against the aforesaid conclusions and, therefore, the suit deserves to be decreed, which I hereby decree and grant a permanent injunction to Jagdish plaintiff against Sadhu Ram, his son Sat Pal and Yakub, defendants, restraining them from interfering with the possession of Jagdish except in due course of law. Jagdish plaintiff would be entitled to costs of these proceedings throughout from Sadhu Ram defendant. I also award spent costs under Section 35A of the Code of Civil Procedure by way of compensation amounting to Rs. 1,000/ (Rupees one thousand only) to Jagdish plaintiff, which would be payable by Sadhu Ram defendant as he raised not only false defences but also manipulated the changes in the Khasra Girdawaris from Kharif 1977 by confessing in favour of Yakub behind the back of Jagdish plaintiff, which directly affected his rights. The revision is dismissed and the suit stands decreed. Decree sheet be prepared.