
(1991) 11 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1294 of 1984

Smt. Kesar Devi and Others

APPELLANT

Vs

Suraj Bhan

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8, 8(1), 8(2), 8(3)
Punjab Security of Land Tenures Act, 1953 — Section 9

Citation : (1993) 1 ILR (P&H) 230 : (1992) 101 PLR 257

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : M.S. Jain and Adarsh Jain, for the Appellant; Gopi Chand, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—This regular second appeal is directed against the judgment and decree of the first appellate Court reversing on appeal those of the trial Judge and dismissing the suit of the plaintiff-appellants for restraining the defendant-respondent from interfering in their peaceful possession.

2. the facts :-

The plaintiff-appellants (hereinafter the plaintiffs) alleged that they were owners-in-possession of the disputed land; that in June, 1975, land measuring 84 Kanals 2 Marias described in paragraph 3 of the plaint was given on lease to the defendant-respondent (hereinafter the defendant) for five years for cultivation as lessee at the rate of Rs. 800/- per annum; that the said lease period expired on June 10, 1980; that after June 15, 1980, the plaintiffs cultivated the land and continued to be in possession as owners and that the defendant threatened to interfere in their peaceful possession, thus necessitating the filing of the suit giving rise to this second appeal.

3. The defendant denied the allegations made in the plaint and pleaded that the

terms of the lease were not settled; that it was settled between the parties that he was to continue to remain in possession of the suit land as a lessee on payment of Rs. 500/- per annum as lease money; that he was in possession of the suit land as a tenant under the plaintiffs; that the plaintiffs received rent of Rs. 500/- in the year 1981 from him and that too after 10th of June; that plaintiffs No. 2 to 4 were majors and were wrongly shown as minors and that the civil Court had no jurisdiction.

4. The pleadings of the parties gave rise to the following issues:

1. Whether the plaintiffs are owners in possession of the suit land? OPP

2. Whether the suit is not maintainable in the present form?

3. Relief.

2A. Whether the plaintiffs are entitled to possession of the suit land as tenant; if so, to what effect? OPD

2B. Whether the defendant is in possession of the suit land as tenant; if so, to what effect? OPD

2C. Whether the civil court has no jurisdiction to try the present suit? OPD

2D. Whether the plaintiffs are estopped to file the present suit by their Act and conduct? OPD

5. Issues No. 1, 2A and 2B were dealt together and it was held by the trial Judge that the plaintiffs were in possession of the suit land and the defendant was neither in possession as tenant nor had tenancy rights over the suit land; issue No. 2 was decided in favour of the plaintiffs and it was held that the suit was maintainable; issue No. 2-C was decided in favour of the plaintiffs and against the defendant on the ground that the defendant had failed to establish that he was a tenant over the suit land and, therefore, the civil Court had jurisdiction to try the suit; issue No. 2-D was decided in favour of the plaintiffs and against the defendant and it was held that there was nothing on the file to show any act or conduct of the plaintiffs estopping them to file the present suit. As a result of the findings under issues No. 1, 2-A and 2-B, the plaintiffs' suit was decreed.

6. The defendant assailed the judgment and decree of the trial Court in first appeal and the first appellate Court reversed the judgment and decree of the trial Judge on the following grounds:-

(i) The lease was voidable at the instance of the minor lessors. On the expiry of the lease, they did not take steps to avoid the same;

(ii) The defendant was in possession of the suit land prior to the execution of the lease deed and continued to remain in possession thereof after the expiry of the lease;

(iii) On the expiry of the lease, the lessee could be evicted only under the

provisions of section 9 of the Punjab Security of Land Tenures Act, 1953.

7. The conclusions arrived at by the first appellate Court are neither supported at law nor on facts. Clause (b) of sub-section (2) of section 8 of the Hindu Minority and Guardianship Act, 1956 says that a natural guardian can lease any part of minor's immovable property for five years without the previous permission of the Court. If the lease of minor's immovable property is for a term exceeding five years or for a term extending more than one year beyond the date on which the minor has attained majority and is created without the prior permission of the Court, the same is voidable at the instance of the minor. The lease with regard to the suit land was created vide registered lease deed dated June 10, 1975, copy Ex. PX/1. The natural guardian of the minors, namely, Smt. Kesar Devi, leased out the agricultural land owned by her and her minor daughters for five years to the defendant. The lease was created presumably in the light of the provisions of clause (b) of sub-section (2) of section 8 of the Hindu Minority and Guardianship Act. The minors through their next friend filed the suit for possession of the land which was leased out under lease deed dated June 10, 1975. On June 15, 1981, the action was taken in conformity with the provisions of sub-section (3) of section 8 of the Hindu Minority and Guardianship Act. Sub-section (3) of section 8 says that any disposal of immovable property by a, natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. The filing of the present suit is in exercise of the right of the minors to avoid the lease. The first appellate Court did not appreciate that the minor-lessors were plaintiffs in the suit and they had sought recovery of possession of the leased out property after the expiry of the lease period. The suit was filed for avoiding the lease.

8. The first appellate Court has misread the evidence. The documentary evidence produced on record does not indicate the possession of the defendant anterior to the lease. To the contrary, the recital in the lease deed, Ex. PX/1, that the defendant was in possession of the suit property prior to the creation of the lease is belied by the lease deed, copy Ex. PX/1, itself. The defendant signed the lease deed. His signature appears in the foot note in English. The essential recitals in the lease deed are :-

(a) The land which was being leased out was in cultivating possession of the lessor;

(b) The next friend of the minor-lessors was in service and was not in a position to properly cultivate the land;

(c) The lease was created with effect from June 1, 1975 upto May 3, 1980 in favour of the defendant on payment of lease money of Rs. 500/- per annum;

(d) The lessee was delivered possession of the land leased out at the spot. On the expiry of the lease period, the lessee was enjoined to deliver back peaceful possession of the land to the lessors.

There is no evidence on the record to show that the recital in the lease deed, copy EX/1, regarding delivery of possession at the spot to the lessee (defendant) was incorrect. The defendant did not lead any evidence to disprove the recitals in the lease deed, copy Ex. PX/1. He is a signatory to the lease deed and it furnishes presumptive evidence that the recitals in the lease deed were admitted, as correct when it was signed.

9. Hindu Minority and Guardianship Act is a special enactment. Section 8 of this Act gives statutory recognition to some of the powers which used to be enjoyed by the natural guardian under the Old Hindu Law and imposes two important restrictions on him in dealing with the immovable property of the minor. The first restriction is that the guardian can in no case bind the minor by a personal covenant. The second restriction is that he shall not mortgage or create a charge or transfer by sale, gift, exchange or otherwise or even lease out the property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority, without the previous permission of the Court. Special protection granted to the minor under this Act cannot be whittle down or eroded by any other special enactment. Section 9 of the Punjab Security of 1. and Tenures Act furnishes grounds for eviction of a tenant and has to be so read that the beneficial provisions of section 8 of the Hindu Minority and Guardianship Act are not nullified. What has been granted under the special Act for protection of the minor's interests cannot be withdrawn by another special statute. This cannot be the intention of the legislature u/s 9 of the Punjab Security of Land Tenures Act. What has been forbidden by the Hindu Minority and Guardianship Act cannot be legalised u/s 9 of the Punjab Security of Land Tenures Act section 9 of the Punjab Security of Land Tenures Act will not give any protection to the tenant with regard to land owned by minors and leased out by their natural guardian in terms of the provisions of that Act. Moreover, the defendant is a tenant as long as the tenancy subsists and if the tenancy is for a fixed period, he will cease to be a tenant after the expiry of that period. Section 9 of the Punjab Security of Land Tenures Act protects a tenant as long as he is a tenant. In *Mandir Jhoke Hari Har v. Shrimati Ajit Kaur* 1977 P. L. J. 315, it was held thus :-

"Section 9 of the Punjab Security of Land Tenures Act protects the tenant against eviction, except on the grounds specified in that provision. u/s 2(6.) of the Punjab Security of Land Tenures Act the expression "tenant" is assigned the same meaning as in the Punjab Tenancy Act. u/s 4(5) of the Punjab Tenancy Act, a tenant is defined as meaning a person who holds land under another person and is, or, but for a special contract would be liable to pay rent for that land to that other person" It does not appear from the definition that once a person is admitted to a tenancy he continues to be tenant for ever under the provisions of the Punjab Tenancy. Act or Punjab Security of Land Tenures Act. He is a tenant so long as the tenancy subsists and if the tenancy is for a fixed period, he ceases to be a tenant on the expiry of that period. Section 9 of the Punjab Security of Land Tenures Act will, therefore, protect a person from eviction so long as he

continues to be a tenant and not after he ceases to be a tenant. To that extent the argument of Shri Gokal Chand Mittal must be accepted. That does not, however, mean that a landlord is entitled to take possession of the land forcibly on the expiry of the lease. If a tenant refuses to vacate the land on the expiry of the lease, he can only evict him in accordance with law. He cannot take the law into his own hands. As I said earlier, both the lower Courts have found that the defendants took possession of the land unlawfully."

10. A discordant note was put in *Rameshwar v. Shri Sheo Chand* 1981 P. L. J. 352. The learned Single Judge held that the view taken in *Mander Jhoke Hari Har*'s case (supra) by O. Chinnapa Reddy, J. was not correct in view of the dictum of the apex Court in *Bhajan Lal v. State of Punjab* 1970 P. L. J. 812. In that case, the apex Court held that till the Assistant Collector passes an order of ejectment against a tenant, the right of the tenant is not extinguished. The point for determination before the apex Court arose in the following circumstances ; *Bhajan Lal* (appellant before the apex Court) filed an application u/s 14-A of the Punjab Security of Land Tenures Act for eviction of the tenant on the ground that the tenant had failed to pay the rent regularly. The application was rejected by the Assistant Collector and the order was affirmed on appeal by the Collector. However, the Financial Commissioner set aside the order of the Collector and remanded the case for fresh decision vide order dated January 8, 1960. On February 20, 1961, the tenant applied u/s 18 of the Act for purchase of the land. That application was rejected and the order was affirmed on appeal, but by order dated October 5, 1962, the Financial Commissioner remanded the case for determination whether the tenant was in occupation of the land for six years before the date of filing of the petition. The application filed by the tenant for purchase of the land was allowed. The application filed by the landlord was also allowed and the two orders, i.e. the order of eviction and order of purchase were passed on April 30, 1964. It was in this context that the apex Court held that so long as the order of ejectment had not been passed against the tenant and his tenancy right had not been extinguished, he continued to be the tenant and was entitled to purchase the land. A judgment is an authority for what it actually decides and not every observation made therein. The judgment rendered by the apex Court in *Bhajan Lal*'s case (supra) does not even remotely suggest that the view taken by O. Chinnapa Reddy, J. in *Mandir Jhoke Hari Har*'s case (supra) is incorrect.

11. The facts of *Rameshwar*'s case are wholly distinguishable. The land owned by the minors was not leased out and there was no dispute of the kind as has arisen in the instant case.

12. The first appellate Court observed in its judgment that the correction of khasra girdawari entries in favour of the defendant during the pendency of the suit cannot be ignored. It was in error in saying so. Correction of khasra girdawari entries during the pendency of the civil suit cannot tilt the balance in favour of the person in whose favour the correction has been ordered. Correction

of the khasra girdawari entries indicating the possession of the defendant in place of the plaintiffs is inconsequential. The plaintiffs' version that they entered into possession after the expiry of the lease cannot be disbelieved. Plaintiff No. 1 Smt. Kesar Devi deposed that she was cultivating the land through her husband's elder brother's son. This statement has not been disproved by the defendant. Moreover, the circumstances of the case indicate that the defendant wants to retain the possession by every conceivable method. He was appointed as a general attorney vide general power of attorney dated August 20, 1964, EX. PW1/1. This power of attorney was cancelled vide registered cancellation deed dated June 13, 1981. The registered deed of cancellation is at page 227 of the paper book, although not formally exhibited, yet it is a registered document and its authenticity and genuineness is beyond dispute. The plaintiffs appear to have given the suit land on lease to the defendant since latter appears to be a man of her confidence. He betrayed that confidence when after delivering back possession on the expiry of the lease, he attempted to take forcible possession from the lessors. The minors and their mother had no alternative but to seek the protection of law, which cannot be denied to them. Their claim deserves to succeed.

13. For the reasons stated above, the appeal succeeds, the judgment and decree of the first appellate Court are set aside and those of the trial Court restored with costs. Counsel's fee is assessed at Rs. 2,000/-.