
(2010) 04 P&H CK 0374
In the Punjab And Haryana At Chandigarh

Smt. Shanti

APPELLANT

Vs

Bijender Singh

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 04 P&H CK 0374

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.—This is revision petition by Shanti plaintiff under Article 227 of the Constitution of India assailing order dated 23.10.2008, Annexure P/1 passed by learned Civil Judge (Senior Division) Jhajjar thereby dismissing plaintiff's application for temporary injunction and the appellate judgment dated 22.5.2009 (Annexure P/3) passed by learned Additional District Judge, Jhajjar thereby dismissing the plaintiff's appeal against order dated 23.10.2008, Annexure P/1 passed by the lower court.

2. Plaintiff's case is that her father Bansi was in possession of the suit land as tenant and after his death, the plaintiff is in possession thereof but the defendant-respondent illegally procured order dated 26.10.1999 from Assistant Collector IInd Grade, Jhajjar regarding correction of khasra girdawari in his favour. On coming to know of the said order, the plaintiff challenged it by way of appeal which was pending when the suit was filed but the said appeal has since been allowed vide order dated 20.1.2009, Annexure P/4 passed by the Collector and order of the Assistant Collector has been set aside and the matter has been remanded to the Assistant Collector for fresh decision. The defendant on the basis of order dated 26.10.1999 threatened to interfere in the possession of the plaintiff over the suit land. Accordingly plaintiff filed suit and claimed temporary injunction restraining defendant from interfering in plaintiff's possession over the suit land till final decision of the suit.

3. Defendant admitted that plaintiff's father Bansi was in possession of suit land as tenant but the defendant pleaded that Bansi was not having male issue or widow at the time of his death. The plaintiff being daughter of Bansi could not inherit the tenancy and after death of Bansi, possession of the suit land reverted to owners who gave the same to defendant as tenant on 1/3rd Batai. Various other pleas were also raised.

4. I have heard learned Counsel for the parties and perused the case file.

5. Learned Counsel for the petitioner vehemently contended that admittedly plaintiff's father was in possession of the suit land and in view thereof, after death of her father, the plaintiff came into possession of the suit land and defendant has no right, title or interest therein. It was also contended that there is no material on record to depict that the suit land was ever given on Batai by the owners to the defendant/respondent. In this context it was pointed out that before the Collector, it was argued on behalf of the respondent, as observed in order Annexure P/4 that Ramji Lal owner of the suit land had died 30/40 years ago and whereabouts of his legal representatives were not known. It was consequently contended that no body on behalf of the owners, therefore, gave the suit land to the defendant for cultivation.

6. Learned Counsel for the respondent, on the other hand, vehemently contended that in view of Section 8 of the Punjab Security of Land Tenures Act, 1953, the plaintiff could not have inherited tenancy from her father Bansi. It was also contended that the defendant is paying Batai to grandsons of Ramji Lal owner since deceased.

7. I have carefully considered the rival contentions. Admittedly, plaintiff's father Bansi was in possession of the suit land. On his death, the possession would not revert to the owners automatically. In any event, owner Ramji Lal, as per averments of the respondent himself had predeceased plaintiff's father Bansi because Bansi is said to have died in the year 1983 whereas Ramji Lal had died 30/40 years ago and whereabouts of legal representatives of Ramji Lal are not known as argued on behalf of learned Counsel for the respondent himself before the Collector. There was none to give the suit land to defendant-respondent for cultivation. There is also no material on record to substantiate the plea of the defendant that possession of the suit land was ever given to him for cultivation by any legal representative of Ramji Lal. Mere assertion or allegation in this behalf would not be sufficient to discard the claim of the plaintiff. Even if it is assumed that tenancy rights are not inheritable even then the plaintiff could prima facie step into shoes of her father to cultivate the suit land from where she could not be dispossessed except in due course of law.

8. For the reasons aforesaid, I find that the plaintiff has strong prima facie case in her favour. The plaintiff prima facie is in possession of the suit land. Therefore, balance of convenience lies in her favour and she would suffer irreparable loss and injury if temporary injunction is not granted. On the other hand, the

defendant prima facie has no right, title or interest in the suit land. The plaintiff has thus made out all necessary ingredients for grant of temporary injunction. In view of the aforesaid, orders of both the courts below are patently illegal and unsustainable. Courts below have adopted erroneous approach.

9. For the reasons recorded hereinabove, the instant revision is allowed and impugned order dated 23.10.2008, Annexure P/1 passed by the trial court and judgment dated 22.5.2009, Annexure P/3 passed by the appellate court are set aside and plaintiff's application for temporary injunction is allowed. Defendant is restrained from interfering in the possession of the plaintiff over the suit land till final decision of the suit except in due course of law. It is, however, expressly made clear that nothing observed hereinabove shall be construed as expression of opinion on the merits of the suit.