

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No.2321 of 1988

Date of decision: 11.02.2015

Risala

.....Appellant

Versus

Shubh Ram and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Mani Ram Verma, Advocate,
for the appellant.

Mr.O.P.Sharma, Advocate
for respondent No.1.

Raj Mohan Singh, J.

1. The present regular second appeal was filed under Section 41 of the Punjab Courts Act. Framing of question of law was not necessary in the light of decision rendered by Full Bench of this Court in '**Ganpat versus Smt. Ram Devi and Ors. 1977 PLR Page-1**', wherein it was held that the provisions of Section 41 of the Punjab Courts Act, are in no way effected and curtailed by the amendment made in Section 100 of CPC. Now, since the regular second appeal is maintainable only with the aid of section 100 CPC, therefore, substantial questions of law is *sine qua non* for maintaining the appeal.

2. Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in clauses (a) to (c) of Section 100 (1) CPC i.e. (a) the decision being

contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law and (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

3. Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium*'. The underlined purpose was to bring finality to the issues/litigation at some point of time.

4. In the present appeal, the substantial question of law has not been framed. Thus the Court proposes to frame following substantial questions of law in order to test the legality of claim of appellants:-

1. Whether defendant/appellant can be held to be tenant in possession who can be ejected in due course of law?
2. Whether Section 4 (1) of the Administration of Evacuee Property Act, 1950 has an effect of abrogation/ extinction of tenancy rights in view of its non obstante nature?
3. Whether act done by the competent authority in

discharge of public duty after following proper procedure draws presumption under the Punjab Land Revenue Act more particularly when the entries have been given effect in the revenue record?

5. Defendant No.1 is in appeal against the judgment and decree dated 3.8.1988, vide which the suit for permanent injunction filed by the plaintiff was decreed in appeal.

6. Respondent No.1-plaintiff filed suit for permanent injunction against the defendants restraining them from interfering into ownership and possession of the plaintiff over the land measuring 29 kanal 6 marla, as shown in the plaint according to jamabandi for the year 1982-83. Plaintiff alleged that the land in question measuring 29 kanal 6 marla was purchased by him from the Custodian Department in open auction and also paid the entire sale consideration in its favour. He claimed himself to be absolute owner of the property and the possession was delivered to him by the competent authorities i.e. Tehsildar (Sales), vide *rapat roznamcha* No.145 dated 8.2.1985 in respect of 9 kanal 7 marla of land and vide *rapat roznamcha* No.21 dated 20.9.1985 in respect of 16 kanal 19 marla of land. In pursuance of delivery of possession vide the aforesaid *rapat roznamcha* entries, the plaintiff came into actual physical possession of the land in question and khasra girdawaris were entered in his name. Thus, the plaintiff claimed himself to be absolute owner in possession of the land so purchased by him from the Custodian Department.

7. Feeling apprehension of dispossession, plaintiff filed suit

for permanent injunction against the defendants to restrain them from interfering in his lawful ownership and possession over the suit land.

8. Suit was contested by the defendants. Defendants alleged that they had been continuing in possession of the land in question as tenants since the time of their forefathers. Their possession was continuing and as such, the suit itself was not maintainable. The *rapat roznamcha* entries were claimed to be false and fabricated and the possession was never delivered to the plaintiff. Besides taking all other customary pleas, it was prayed that the suit be dismissed being not maintainable.

9. Replication was filed. On the basis of pleadings of the parties, trial Court framed following necessary issues:-

“1. Whether the plaintiff is owner in possession of the suit land as alleged ? OPP

2. Whether the plaintiff has no locus standi to file the present suit ? OPD

3. Whether the plaintiff has no cause of action ? OPD

4. Whether the plaintiff is stopped from filing the present suit by his act and conduct ? OPD

5. Whether the suit is bad for non joinder and mis joinder of necessary parties ? OPD

6. Whether the suit is under valued for the purpose of court fee ? OPD

7. Whether the plaintiff is guilty of concealing the material facts ? OPD

Relief.”

10. The plaintiff got examined himself as PW-1 besides adducing documentary evidence Ex.P-1 to Ex.P-5. On the other hand, defendants got examined DW-1 Risal Singh, DW-2 Sheo Ram and DW-3 Daya Nand and also got exhibited documentary evidence Ex.D-1 to D-11.

11. Trial Court dismissed the suit filed by the plaintiff vide judgment and decree dated 2.12.1987 by holding that the defendants were in established possession of the suit land as tenants and they were never ejected from the land and, therefore, delivery of possession in favour of the plaintiff, vide the aforesaid *rapat roznamcha* entries, was doubted and possession of the defendants was held as they were never evicted from the land in question by the process of law.

12. Feeling aggrieved by the judgment and decree of the trial Court, plaintiff filed the appeal before Additional District Judge-II, Bhiwani, who accepted the same vide judgment and decree dated 3.8.1988. Now defendant No.1 is in second appeal before this Court.

13. I have heard the arguments of both the parties and have also perused the record. It is necessary to trace out the bare facts with reference to available material on record.

14. As per plaint, the suit property has been shown by the following revenue particulars:-

“Khewat No.30 min khatoni No.38-39 muraba No.34 killa No.16/2 (2-0) 25 (7-12) square No.37 killa No.10/1 (4-13) and square No.38 killa No.5 (7-12) killa No.6/12 (4-9) situated in village Kasni Khurd Tehsil Loharu District

Bhiwani.”

15 According to Ex.P-1, jamabandi for the year 1982-83, land was shown under the ownership of Central Government and was possession of Bhagwan Singh, and Gulab Singh son of Nanu son of Dalsukh as *gair marusi*. Bajrang and Sheo Ram, sons of Shadi son of Dalsukh were shown to be *gair marusi doyam* under *gair marusi awal*.

16. Ex.P-2 was the khasra girdawari from 26.10.1983 to 8.3.1985. *Rapat* No. 145 dated 8.2.1985 was given effect in *Hari* in 1985 in respect of killa No.34/ 16/2 (2-1) and 25 (7-12).

17. Ex.P-3 was the *rapat roznamcha* No.145 dated 8.2.1985. According to this *rapat roznamcha*, 9 kanal 7 marlas of land was shown to be vacant on the date of spot inspection. Possession of the vacant land was shown delivered in favour of plaintiff. The remaining land of 16 kanal 19 marlas was found cultivated with the crop and, therefore, qua this land possession could not be delivered. However, compensation of the standing crop to the tune of ₹ 470/- was assessed.

18. Ex.P-4 was the *rapat roznamcha* dated 20.9.1985. Possession of 16 kanals 19 marlas of land was shown to have been delivered vide this document.

19. Ex.P-5 was the *khasra girdawari* w.e.f. 16.10.1985 onwards. In the khasra girdawari, name of the plaintiff duly appeared in pursuance to the *rapat roznamchas* vide which possession was delivered in his favour.

20. Defendants got exhibited Ex.D-1, copy of *rapat* No.19

dated 20.9.1985 under Sections 107/ 151 Cr.P.C., Police Station Loharu. Copy of *calendara* as Ex.D-2, copy of order dated 28.3.1986 as Ex.D-3, copy of khasra girdawari/ revenue record/ jamabandi as Ex.D-4 to Ex.D-9. In Ex.D-8 and Ex.D-9, ownership was shown in favour of Central Government, whereas, possession was shown with Gulab son of Nanu as *gair marusi*. Shajra nasab, Ex.D-10, was also got exhibited by the defendants, showing their relationship with Gulab, Nanu and Dalsukh. Khasra girdawari prior to the delivery of possession was also got exhibited as Ex.D-11 showing possession of the defendants over the suit land.

21. Learned counsel for the appellant has submitted that once their possession was established from record in the capacity of tenant, from the times of their forefathers in the revenue record, they could not be presumed to be ejected without there being any process of law. Learned counsel has further submitted that no revenue official viz. Patwari/ kanungo have been examined to corroborate the alleged plea of delivery of possession in favour of the plaintiff in pursuance to *rapat roznamcha* entries dated 8.2.1985 and 20.9.1985. *Rapat roznamcha* proceedings were claimed to be false and fabricated and even presence of Risala was also shown which was a farce. The trial Court held that the plaintiff was not proved to be in possession of the land in question and *rapat roznamcha* entries of delivery of possession were held to be false and fabricated.

22. Learned counsel for the appellant relied upon **1970 PLR 719** titled **Lila Krishan etc. vs. Union of India etc.** to contend that once the title was conferred upon the auction purchaser in respect of

evacuee property, the unauthorised occupant cannot be dispossessed by way of delivery of possession by the rehabilitation authorities. According to the appellant, once the sale certificate was issued by the rehabilitation department in favour of the auction purchaser, then the department became *functus officio*. The auction purchaser having become full owner of the property could have availed his remedies under law to seek possession of the property in question. Section 19 (2) of the Disabled Persons (Compensation and Rehabilitation Act), 1954 has been pressed into service to say that where any person has ceased to be entitled to the possession of any evacuee property by reasons of any action taken under sub section (1) or is otherwise in an unauthorised possession of any evacuee property or any other immovable properties forming part of the compensation pool, he shall, after he has been given reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the Managing Officer or Managing Corporation or by any other person duly authorised by such officer or corporation.

23. In nut shell, it was argued that the rehabilitation department under the Act ceased to have any jurisdiction in respect of that property after putting the same to public auction and issuing sale certificate in favour of allottee. Thereafter, the allottee can exercise all his rights of ownership like any other owner in respect of that land and avail his legal remedies for dispossessing the unauthorised occupant. The allottee cannot insist that the authorities under the Act should deliver the possession to him. A

perusal of the aforesaid judgment has some different connotation .

In the cited judgment, the contemplated action was in respect of delivery of possession by the rehabilitation department.

24. In the present case, plaintiff filed the suit for permanent injunction only after stated delivery of possession to him by the rehabilitation department. In a way permanent injunction was sought for protecting the possession of the plaintiff, which was delivered in pursuance to the *rapat roznamcha* entries as pleaded by the plaintiff. On this differentia, the cited judgment is distinguishable and is not strictly applicable to the facts of the case.

25. It was an admitted case that the land in question was an evacuee property which vested in custodian at the relevant time. The property so vested with the custodian, was governed by the provisions of Administration of Evacuee Property Act, 1950 ('the AEP Act for short).

26. Section 4 of the AEP Act is necessary to be highlighted in the present context:-

4. Act to override other laws.

(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or evictions from, any property shall apply, or be deemed

ever to have applied, to evacuee property.”

27. A bare reading of the aforesaid provision establishes that the land vested with the custodian free from all encumbrances. The lease or the tenancy rights were set at naught on vesting of the land in custodian. Operation of Section 4 (1) of the AEP Act resulted in extinguishment of tenancy rights because of operation of non obstante clause of Section 4 (1) of the aforesaid Act. In view of aforesaid provision, defendant cannot take benefit of continued tenancy because by virtue of operation of aforesaid section 4(1) of the AEP Act, tenancy rights also stood extinguished. Therefore, respondents cannot take benefit of the fact that they had been continuing as tenants under the Mohammadens prior to 14.8.1947.

28. The aforesaid provision came up for consideration before the Hon'ble Supreme Court in case of **Tar Mohd. and others vs. Union of India and others** AIR 1997 SC 3679 and the Hon'ble Apex Court was pleased to observe in the following manner:-

“Firstly, we are unable to appreciate the stand taken by the appellants for the reason that there should be a specific finding by the authorities that the appellants had tenancy granted by Mohd.Hasham Abdulla prior to 14.8.1947 in their favour and that they remained in occupation under that title as tenants. Then only subsection (2) of section 12 of Act stands attracted. There is no such finding recorded by the High court in that behalf nor any such contention was raised. Their only premise is that they were tenant and, therefore, the property was not

covered under the AEP Act as free from encumbrances. That contention, though raised in the High court, was negated. The High Court reasoned that by operation of Section 4(1) of the AEP Act, the pre-existing law stands excluded by virtue of the non obstante clause. Thereby, tenancy rights also stand extinguished by operation of the non obstante clause. Once section 4(1) of the AEP Act stands attracted, the alleged right to tenancy has no foundation for resisting taking possession of the land. Even the order passed by the Tehsildar and Assistant Custodian has not been made part of the record which was impugned in the High Court. Under these circumstances, there is no case warranting interference.”

29. Apparently, the possession of the respondents was not in any authorised capacity, rather the possession was taken in due course of law with the established procedure of delivery of possession by means of *rapat roznamcha* entries.

30. The property in question came to be vested in custodian and thereafter, the same was subjected to auction. The extinguishment of rights of the defendants were by way of enactment of law. The defendants could have resorted to legal action against the said extinguishment of their right of tenancy. The status of defendants being that of tenant was lawfully extinguished and the said action was never assailed by the defendants in any manner. The possession of the defendants, thereafter, became un-authorised and they were lawfully dealt with and possession was lawfully taken

by means of delivery of possession on the spot and recording of rapat roznamcha entries.

31. After the delivery of possession, revenue record was set at right in pursuance of entries of *rapat roznamcha* and the plaintiff was duly shown in actual physical possession of the land qua which possession was delivered by means of delivery of possession and rapat roznamcha entries. The process of entries made in the revenue record were by following due procedure of law and had legal sanctity behind it.

32. The act done in discharge of public duty by the revenue officers cannot be attributed with any malafide unless and until the same is proved to be contrary. No act of malafide can be presumed in discharge of public duty by the public servant in the absence of evidence. Once the land was held to be custodian property and was lawfully auctioned in favour of the plaintiff, all other things were the consequence of natural corollary arising there from and, therefore the process being a recognised mode, cannot be faulted with at the behest of the defendants.

33. Contention of the learned counsel for the appellant that once tenancy is proved, tenant could have been ejected in due course of law, stands nullified in view of operation of Section 4 (1) of the AEP Act by virtue of which pre-existing law or procedure of law stands excluded by way of a non obstante clause, whereby tenancy rights stand extinguished by operation of said clause. Once Section 4 (1) of the AEP Act is attracted, the alleged tenancy rights of the defendants are set at naught nor it amounts to any incumbrance over

the property in question.

34. In consequence of aforesaid, the tenancy rights as alleged by the defendant/ appellant has no foundation for resisting taking of possession of the land by the plaintiff. Therefore, the delivery of possession by a known mode of procedure cannot be held suffering from any illegality or perversity by any stretch of imagination. The competent authority was duly vested with powers to take possession of the land from the defendants and deliver the same to the plaintiff because with the enactment of aforesaid act, the defendants had no subsisting rights over the property in question.

35. The order dated 14.6.1985 passed in Civil Suit No.171 dated 14.3.1985 does not advance the case of the defendants because first of all the possession of the land in question was taken by the custodian and, thereafter, the same was delivered to the plaintiff vide *rapat roznamchas* Ex.P-3 and Ex.P-4. The dispossession of the defendants could have been agitated by them in any remedies available to them but certainly not in a suit for permanent injunction filed by the plaintiff seeking protection on the basis of ownership as well as possessory right over the land in question.

36. The substantial questions of law as formulated in the case stand answered: (1) even though the defendant was a tenant over the land in question, the normal rule of his dispossession in due course of law stands abrogated in view of non obstante clause in Section 4 (1) of the AEP Act; (2) the proceedings done after following proper procedure by the competent authority stood implemented in

the revenue record and, therefore, draws presumption of correctness and (3) the decision rendered in Civil Suit No.171 of 1985 does not constitute any resjudicata in the present proceedings as a due process of law has been evolved in taking possession of the land in question after extinguishment of right of tenancy by operation of obstante clause in Section 4 (1) of the AEP Act.

37. In this way, question of law No. 1 is answered in negative. Question No.2 has to be answered in affirmative as the non obstante clause i.e. Section 4 (1) of the Administration of Evacuee Property Act, 1950 has the effect of abrogation of tenancy right and resultantly the general rule of ejectment of tenant in due course of law is not attracted.

38. In view of what has been stated above, impugned judgment and decree passed by lower Appellate Court is upheld. Appeal is dismissed, leaving the parties to bear their own costs.

(RAJ MOHAN SINGH)
JUDGE

February 11, 2015
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