

124.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.2636 of 2015 (O&M)

Date of decision: 10.12.2015

M/s Khosla Ice and General Mills

... Appellant

versus

Smt. Padmawati (deceased, through LRs) and others.

.... Respondents

II. Regular Second Appeal No.4075 of 2015 (O&M)

M/s Khosla Ice and General Mills

... Appellant

versus

Dr. Mangat Ram Aggarwal (deceased, through LRs) and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Kanwaljit Singh, Senior Advocate,
with Ms. Gurdeep Kaur, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

CM No.9928-C of 2015 in RSA No.4075 of 2015

For the reasons stated in the application, delay of 30
days in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal Nos.2636 and 4075 of 2015

1. Both the appeals are connected and are disposed of by a common order.
2. Both the appeals are against the decision of the appellate court allowing for the respective claimants to ejectment after partitioning their shares of 5/16 and 6/16 by a decree of partition and for the mesne profits determined at ₹600/- per annum from the date of termination of lease till getting possession. The judgment of the appellate court was in reversal of the finding of the trial court dismissing the plaintiff's suit.
3. The plaintiffs' contention was that the property belonged to 3 persons and entered as such in the revenue records, namely, Jaswanti, Sham Lal and Beni Parshad. The plaintiffs would contend that the property was granted in lease for a period of 50 years to the defendant's father and they would disclose that a petition for ejectment had been filed before the Rent Controller by invoking the provisions of Haryana Rent Act. There had been a plea taken that the lease was for a period of 50 years and petition did not go for a full trial and allowed to be dismissed for default. The suit came to be filed in the year 2004 contending that the lease period had also expired in 2003 from the commencement of the lease on 01.09.1953. The defendants had themselves purchased 5/16th share under two

documents of sale on 17.01.1973 and 21.07.1981 and in the respective sale deeds, there had been reference to the remaining shares as belonging to Sham Lal and Beni Parshad and that therefore the plaintiffs were entitled to seek for ejectment of the respective shares of the property from the defendant. They relied on a photocopy of *salasnama* said to have been executed for a term of 50 years commencing from 1953 to the defendant's father.

4. The defendants contended that *salasnama* was not true and it was not admissible when there was no reason given for non-production of the original and no permission had been taken for production of secondary evidence. The purchase of share of Jaswanti of 5/16th through documents dated 17.01.1973 and 21.07.1981 ought not to be taken as an admission of the plaintiffs' respective right to the property as claimed by them. According to the defendants, if there was no document of title in favour of the plaintiffs, the mere revenue entries cannot create title in favour of the plaintiffs. The defendants were in possession of the property in their own right and they prescribed title to the property by adverse possession. The defendants had also contended that the suit itself was not competent, for, the only remedy could have been only by resort to an ejectment petition under the Rent Act under Section 13 and the suit for ejectment in a civil court was not competent. According to the defendants, such an inconsistent plea was possible and a privilege to

take for the defendants.

5. The trial court found that the *salasnama* was but a photocopy and could not, therefore, be relied on, there having been no justification for production of secondary evidence. He accepted the plea that the revenue entry cannot be a proof of title. It was an admitted fact that the previous proceedings for ejectment initiated in 1995 was only against the defendant's father and they were not themselves parties. They were neither parties in the *salasnama* nor in the subsequent proceedings and, therefore, the father's admission of his status as a tenant cannot bind the defendant. They shall be permitted to show that it was by mistake and the plaintiff suing the ejectment was bound to prove title and the same had not been established. The trial court dismissed the suit but the appellate court relied particularly on the recitals in the sale deeds (P4 and P5) in favour of the defendants referring to Sham Lal and Beni Parshad as the remaining sharers and also made reference to the jamabandi Ex.P1 for the year 1988-89 that showed the plaintiff's predecessors to be the co-owners and the reference to the property as property held in co-ownership as clearly proving the plaintiff's title to the property. While granting the decree, the court found that the defendants were the owners of portion of the property having purchased and established a petrol outlet and, therefore, granted a decree for partition of the plaintiffs' respective share and for

possession.

6. The learned senior counsel appearing on behalf of the appellant presents as an argument of what was accepted before the trial court, namely, that the *salasnama* could no be relied upon; title cannot be established by revenue entries; admission of status as tenant by the father cannot bind the defendants; the plea of adverse possession ought not to be taken as constituting an admission of plaintiff's title to the property; remedy, if at all, could have been only a petition under Section 13 of the Haryana Rent Act. Each one of these contentions raised, in my view, are not legally tenable and they would require to be rejected with the following reasons.

7. It is a point well taken that the revenue entries could never be the source of title. However, where the transactions of the property by the party or his predecessor date back to a finite period which is fairly long, it will be necessary to examine whether such a transaction where a party or the predecessor asserted a right was consistent with title and to examine if it was merely a sporadic act or there had been consistent line of transactions or entries consistent with the ownership. In this case, the plaintiffs were claiming that there had been a lease of property for a term of 50 years commencing from the year 1953. If the person to whom the lease had been allegedly made would join issue with a judicial proceeding to affirm that his own possession was relatable to a transaction of

lease providing for 50 years, it ought to be taken a lending the first positive proof of a claim to title. In this case, the defendant's predecessor had in the petition filed for ejectment pleaded for his own status as a tenant. A purchase from one co-owner conceding to the right of other co-owners brings beyond a pale of doubt the plaintiffs' right as owners of the respective shares as established and find corroboration in sale transactions and not pin down merely to a revenue entry. Seen in this context the appellate court was justified in reversing the finding of the trial court and taking revenue entries along with other transactions to find that the plaintiffs have proved their title.

8. The defendants surely have a right to take up inconsistent plea but such inconsistency cannot be mutually destructive. If there was a plea by the defendant that their predecessor had committed a mistake in admitting title then the defendant's own possession must be shown as obtaining independently of their predecessor who admitted title. If the defendants had any right to hold possession independently of their father who admitted the status of the plaintiff as a landlord, then that possession could be seen to be even adverse. On the other hand, if the defendants were only claiming as successors to their father who claimed a status as tenant or lessee, then Section 116 of the Evidence Act constitutes a bar against the defendants from setting

up any right inconsistent with the status as such tenant or lessee. Section 116 of the Evidence Act uses the expression “no tenant of immovable property, or person claiming through such tenant, shall”. There is no defence in this case brought by the defendants that their own right stands independently of their father and that they denied the plaintiff's right to the property to their knowledge and they had prescribed title to the property by such adverse holding from beyond the statutory period. There was estoppel operating against the defendants and the ejectment action must follow as a matter of course to enable the plaintiffs to secure the relief.

9. Such ejectment suit also can fail if there is a statutory bar against the exercise of jurisdiction at a civil court. The rent control enactments bring such fetter against a landlord for recovery of possession in civil court as indeed the Haryana Urban (Control of Rent and Eviction) Act, 1973 constitutes a special forum for adjudication and also constitutes a bar against the institution of suit in a civil court. If in this suit for ejectment, the defendant had admitted the plaintiffs' status as landlords, they could have ensured a sure exist for the plaintiffs to resort to action under Section 13. If, on the other hand, the defendants were taking a plea of adverse possession and setting up title in themselves, they had literally hoisted their own petard. The Rent Controller has no power to

adjudge on title and a plea which was being taken in the suit was literally a vindication of the choice of the forum as well. If the Rent Controller would be barred from deciding on the issue of title and would restrict its adjudication only to an admitted status of a tenant then the party defendant who sets up title cannot complain that the title as held by the civil court will remain merely a piece of paper and the proper relief could be secured by such an owner only before a Rent Court. The suit for ejectment in a case where the defendant was setting up a hostile title to the landlord was perfectly justified in resorting only to a civil suit for ejectment. I will not, therefore, find the objection regarding the jurisdiction of the civil court to be tenable when the defendant had not admitted to the status as such tenant/lessee and by his own conduct, he had lost the right to urge that the civil suit could not have been instituted.

10. The decree that was granted was on the examination of the documents which were surely relevant for consideration of ownership of the property and the decision for recovery of possession by working out the plaintiff's share in the property by metes and bounds was on the application of correct judicial principles.

11. The points of law that are urged by the learned senior counsel are against the appellants themselves and there is no warrant of interference with the decision of the appellate Court. The

decision is maintained and the second appeals are dismissed.

(K.KANNAN)
JUDGE

10.12.2015
sanjeev