

222.

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

Civil Revision No.4199 of 2014 (O&M)

Date of decision:24.02.2016

Inderpal Singh

... Petitioner

versus

Harmel Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.P.S. Shergill, Advocate,
for the petitioner.

Mr. Vijay Sharma, Advocate,
for respondents 1 to 5.

1. Whether reporters of local papers may be allowed to see the judgment ?No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision petition brings the challenge to the order dismissing an application filed for rejection of a plaint. The suit has been filed for declaration claiming the property as having been inherited from their father-Amar Singh. The plaint averment is that the property belonged to one Sukhwinder who held the properties in excess of the permissible holdings and the property held by Amar Singh was in the capacity of a tenant and within the tenant's holding.

He had applied for purchase of possessory rights and obtained such

right through order of the Collector issued on 14.07.1964. The plaintiffs' contention is that they along with their sisters, who are proforma defendants, have become the owners of the properties, but the defendants 1 and 2 are making a false claim in relation to the same on the basis of some wrong revenue entries. The declaratory action is on the basis that they are owners of the property having obtained right from their father, who, in turn, secured proprietary rights by the order of the revenue officials.

2. It was the contention of the defendants through the adjudication that the suit itself was incompetent. The installment due and payable as compensation to the landlord had not been paid within the time and the rights in favour of the plaintiffs' father had not concluded. The rights claimed by the plaintiffs were under the Pepsu Tenancy and Agricultural Lands Act, 1955 (for short, the Act of 1955) and in terms of Section 47(1) of the Act of 1955, there was a bar of jurisdiction by a civil court to settle, decide or deal with any matter which is required to be settled by the Financial Commissioner, the Collector or the prescribed authority, as the case may be. The contention of the defendants was that the right of the plaintiffs could be pressed for ownership only before the authorities constituted under the Act of 1955 and the suit was not competent.

3. An adjudication relating to the maintainability of the suit and a consideration of whether the plaint is liable for rejection will

be made on the averment in the plaint and the manner in which the plaintiff asserts his claim. If the plaintiff has any prayer in the suit that the order passed by the Collector or any authority under the Act was not correct or any of the orders passed by the authorities would require to be dealt with or interfered by a civil court, verily an objection of the bar of Section 47 will operate. The bar of the said provision ought to be taken as restricted only as the Section itself provides and cannot proliferate on any other adjudication which the civil court alone will have a competency to decide by virtue of Section 9 CPC. The said section enacts a rule of procedure that the civil court will have the jurisdiction to decide suits of all civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The bar must refer to what the Section admits. I have already referred to Section 47 as barring an adjudication with reference to settlement, decision or what could be dealt with by the Collector or other authorities under the Act. No order of the Collector or authority is brought in challenge before this court. The plaintiffs, on the other hand, contend that they have obtained some rights by virtue of the order passed by the authority and the contesting defendants, who are the petitioners are third parties to the proceedings. They are not themselves any beneficiaries of any order from the Collector which order is put to challenge by the plaintiffs. If the defendants have a contention to make that the plaintiffs have

not obtained full-fledged right, it shall be open to the defendants to refer to such abortive attempt to secure title by obtaining the 'P rights' and which had not however been perfected by payments of all the installments. This right of defence will never be lost.

4. The learned counsel relies on a judgment of the Supreme Court in *Mohan Lal Versus Kartar Singh and others-JT 1995(7) SC 573* as laying down the law that the civil court jurisdiction is barred. I am afraid the reliance of this judgment is misplaced. The court was considering a case of claim to possession on the basis of ownership being placed before a civil court on a plea that an order of eviction passed by the Collector under Section 43 of the Act of 1955 was void and ineffective. A challenge to the correctness of the order by the Authority under the Act could not have been brought by means of a civil suit when there was a provision for an appeal under the Act of 1955. Here Section 47 squarely applied. We do not have such a situation in this case for no order of the authority passed under the Act of 1955 is put to challenge. On the other hand, the plaintiffs sourced their title to an order passed by the Collector and if that order, according to the defendants, is not valid or has not matured to full right in the property, it will be a matter of defence for the defendant who is a third party to the proceedings as far as the revenue authorities are concerned. The bar pleaded for the suit was clearly untenable.

5. The civil revision is dismissed with costs of ₹3,500/-
against the respondents.

(K.KANNAN)
JUDGE

24.02.2016
sanjeev