IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3412 of 2017(O&M)
Date of Decision-13.11.2018

Koshla Ice & General Mills and another ... Petitioners

Versus

Padma Wati now deceased & through LR Hari Gopal and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate
for the petitioners.

Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for respondents No.1 to 9.

Mr. Jitinder Singla, Advocate
for LR of respondent No.12.

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__RAJ MOHAN SINGH, J.__

[1]. Petitioners have challenged the order dated 23.03.2017 passed by Civil Judge (Junior Division), Ambala vide which objections filed by the petitioners in terms of Order 20 Rule 18 CPC for not executing the decree in letters and spirit without partition of the land was dismissed.

[2]. Plaintiffs/respondents No.1 to 8 filed a suit for possession by way of ejectment of the defendants and for recovery of mesne profit. Petitioners purchased $5/16^{th}$ share of

the land on 17.01.1973 and 21.07.1981 by way of sale deeds thereby becoming co-sharers. Two suits were decided by common judgment and decree by the trial Court. Trial Court has noticed the fact that the agreement was executed on 18.08.1953 for a period of 50 years. The lease period started from 1953 and the same had expired on 31.08.2003. The suit tiled Mangat Ram Vs. M/s Khosla Ice and General Mills was instituted on 19.08.2004 and the suit titled Padmawati Vs. Inderjit Khosla was instituted on 30.04.2004. The filing of suits was held to be within limitation, but the suits were dismissed on merits by the trial Court vide judgment and decree dated 05.10.2011. However, in appeal, the judgment and decree dated 05.10.2011 passed by the trial Court was reversed.

[3]. Lower Appellate Court held that the plaintiffs/appellants were entitled for possession by way of ejectment of respondent No.1 and mesne profit as per their shares for an amount of Rs.600/- per annum from the date of termination of lease till getting the possession over the suit property as per their shares. They were also held entitled for possession of the suit property qua their shares by way of partition by metes and bounds.

[4]. The judgment and decree passed by the Lower Appellate Court was upheld in RSA Nos.2636 and 4075 of 2015 when the same were dismissed vide order dated 10.12.2015.

High Court while relying upon Section 116 of the Evidence Act held that the defendants were debarred from setting up any right inconsistent with the status of the landlord and there was estoppel operating against the defendants and the ejectment proceedings must culminate to its logical end. 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. Objection regarding jurisdiction is not tenable as the defendant had lost the right to urge that the civil suit could not have been instituted. The order passed by the High Court in RSA Nos.2636 and 4075 of 2015 was even upheld by the Hon'ble Apex Court in SLP(C) Nos.25417-25418 of 2016. The tenant purchasing some share out of tenanted premises cannot avoid ejectment from the premises on the ground of improving his status during currency of the tenancy.

[5]. Learned Senior Counsel for the petitioners by referring to ***Shankar Balwant Lokhande (Dead) by LRs Vs. Chandrakant Shankar Lokhande, 1995(2) RRR 304, Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others, 2007(2) SCC 355*** and ***Vijay Sood Vs. Kanak Devi and others, 2016(2) MPLJ 695*** contended that under Order 20 Rule 18 CPC, a preliminary decree for partition of property can be passed declaring the rights of the parties. Suit continues even after passing of the preliminary decree till the final decree is passed. Preliminary decree is not executable unless the final decree is

drawn specifying the shares of each shareholder by metes and bounds and the same has to be engrossed on stamped paper. Till such time, the decree cannot be executed by referring to the status of the tenant by way of improving his status during currency of the tenancy. Learned Senior Counsel submitted that by virtue of sale deeds in favour of the petitioners, they have become co-shares in the joint land and the decree for possession by way of ejectment cannot be executed till the land is partitioned by metes and bounds. Preliminary decree declares rights and liabilities of the parties.

[6]. On the other hand, learned Senior Counsel for the respondents by referring to ***T. Lakshmipathi and others Vs. P. Nithyananda Reddy and others, 2003(2) RCR (Civil) 305, M/s India Umbrella Manufacturing Co. and others Vs. Bhagabandei Agarwalla (Dead) by LRs Smt. Savitri Agarwalla, 2004(1) RCR (Civil) 686, Sukhdev Rai Kaushal Vs. Gokal Chand Mittal, 2013(4) PLR 454*** and ***Shub Karan Bubna @ Shub Karan Vs. Sita Saran Bubna and others, (2009) 9 Supreme Court Cases 689*** contended that tenancy rights of the defendant cannot be merged with ownership rights by purchase of some shares from co-owners. The owner who inducted the tenant would be entitled to evict the tenant irrespective of share purchased by the tenant during currency of the tenancy. With the purchase of share by the tenant, the tenancy is not extinguished. Doctrine of merger within the meaning of Section 111(d) of the

Transfer of Property Act would not be attracted and tenancy is not extinguished. In order to bring tenancy to an end, the merger should be complete i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of tenant in its entirety. When a part interest of the landlord or the interest of one out of many co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. In such an eventuality, the decree for possession by way of ejectment has to be executed in entirety and thereafter, tenant can be left with the remedy of seeking partition after giving possession of the suit property to the decree holder. Passing of final decree is not necessarily to be drawn in every case. Since the concept of partition is not attracted to the facts and circumstances of the present case, therefore, the issue of drawing final decree is not attracted to the present case. Even in ***Shub Karan Bubna @ Shub Karan case (supra),*** the Hon'ble Apex Court has decided that passing of final decree is not necessary where the Court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the Court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

[7]. In the instant case, the objection raised by the petitioners/judgment debtors is confined to the status of co-

sharers acquired by them during currency of the tenancy and by virtue of such acquisition of status, their plea is that the decree for possession cannot be executed without partition by metes and bounds. Petitioners have purchased share from co-owners thereby improving their status from tenant to that of co-owner. The entire title has not come to the tenant, rather they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole property have become vested in the petitioners at the same time and in the same right. The lease cannot be extinguished by merger unless and until the interests of the lessor fully came to be vested in the lessee i.e. so long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lessee, interest does not sink or drown fully. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction. A co-owner may, by an arrangement, expressed or implied, with his other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owners and if he is dispossessed by the latter, he can recover exclusive possession.

[8]. In terms of Section 116 of the Evidence Act, the tenant cannot deny the ownership of the landlord by whom he was inducted. Rule of estoppel continues to operate between the landlord and the tenant so long as the tenancy continues and is terminated in accordance with law. Similarly, in terms of Section 111 of the Transfer of Property Act, doctrine of merger cannot apply unless and until entire interest of the lessor stands acquired by the lessee and there has to be a complete union of whole interests of the lessor and the lessee so as to enable the lesser interest of the lessee sinking into the larger interest of the lesser in the reversion. It is true that the tenants by purchase of some of the shares of the co-owners have become co-owners in the property but the tenancy rights in isolation would not merge with ownership rights and the owner/landlord who inducted the tenants is entitled to evict the tenants in accordance with law.

[9]. In my considered opinion, the precedents cited by the petitioners in the context of drawing of final decree is not applicable in a case of tenancy when the tenant has purchased some part of the joint property from co-owners. There cannot be any exception to the impugned order dated 23.03.2017 passed by Civil Judge (Junior Division), Ambala, dismissing the objections filed by the petitioners. Relief clause in the judgment

dated 28.11.2014 passed by the Additional District Judge, Ambala cannot be read to mean that ejectment of the respondents was only on account of partition by metes and bounds. The tenant has to be ejected in entirety and thereafter, he can ask for partition in respect of area purchased by him.

[10]. For the reasons recorded hereinabove, I find no error of jurisdiction in the impugned order dated 23.03.2017 passed by Civil Judge (Junior Division), Ambala. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

13.11.2018
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No