

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

**RFA No.2289 of 1986
Decided on : 20.11.2018**

Ram Chand ... Appellant
Versus

Bhopal Singh & others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. B.S.Sudan, Advocate, for the appellant.

Mr. Amit Jain, Advocate, for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present appeal is directed against the judgment and decree dated 03.10.1986, passed by the Addl.District Judge, Ferozepur in the suit for declaration and injunction, filed by the plaintiffs/respondents No.1 to 4, by holding that the defendant No.1/appellant was not a tenant under the defendants No.3 to 5 regarding land measuring 46 kanals 18 marlas. Resultantly, the suit for injunction, restraining the defendants permanently from interfering in peaceful possession of the plaintiffs, was decreed.

The reasoning given by the Addl.District Judge, to whom the suit had been transferred by the District Judge, vide order dated 24.09.1986, was that the appellant herein was claiming his status on the basis of an entry made on 06.04.1981, by the Revenue Official, Mukhtiar Singh, Kanungo. While examining the record in detail, it was noticed that neither the said official had summoned the person in whose name the khasra girdawari was changed and as per Rule 9.13 of the Punjab Land

Records Manual, the returns of the Khariff and Rabi crops had to reach to the Tehsil within one month of the date on which the girdawari commenced those of extra rabi by 1st June. Accordingly, it was held that the Kanungo should have checked the khasra girdawari and the principles of natural justice had been violated as Mukhtiar Singh, DW-5 did not summon anyone while effecting the change and the khasra girdawari and the change on the spot was not supported by any other oral evidence and even contradicted by PW-1 Ram Kumar, who was supposed to be the witness to the change on an inspection done on 16.04.1981. Resultantly, it was held that the official was not competent to effect the change and the change could only have been effected on the consent of the parties and once other persons were not summoned and entry was made illegally and contrary to the Punjab Land Records Manual and only on the basis of a stray entry, the possession, as such, as a tenant, was not supported by any iota of documentary evidence, which would not be considered.

It was further noticed that Ram Chand-appellant never appeared as a witness but his attorney, Sadhu Ram, his brother had appeared through whom the present appeal has also been filed. The brother had vouched for the possession, as such, of defendant No.1 as a tenant of Kanshi Ram and on account of the oral statement, the same was not taken into consideration, in view of the positive statements of PW-10, Sunil Kumar, son of Kanshi Ram, who was the original owner of the land through his ancestors. Similarly, statement

of PW-2, Harpal Singh, who had sold the land, was also taken into consideration that Ram Chand did not figure, as such, in the revenue record and was not a tenant. It was further noticed that defendant No.1 had made a statement as Ext.PW-12 in the proceedings under Section 145 Cr.P.C., wherein he himself had admitted that he was not cultivating any land under defendant No.5 as a tenant and thus, an adverse inference was also held to be against the defendant-appellants. Resultantly, it was held that defendants No.3 to 5 were in possession of the suit land who got possession through Sunil Kumar and other heirs of Kanshi Ram and the plaintiffs had obtained possession on the basis of Ext.P-2, which is an agreement to sell in their favour and therefore, defendant No.1 had never been a tenant, while deciding issues No.1 and 7. Under issues No.2, 3, 4 & 6, it was held that no argument had been addressed by the defendants on the said issues and the same were decided against defendants and in favour of the plaintiffs.

Mr.Sudan has raised a question of law, as such, to the extent that the Addl.District Judge did not have a jurisdiction to try the suit, as such and therefore, his right of appeal, as such, has been taken away and referred to Section 24 CPC. He placed reliance upon the judgment of the Apex Court in **State of Jharkhand & others Vs. M/s Hindustan Construction Company Ltd. AIR 2018 SC 1**, to this extent. Resultantly, it was argued that the Court of the additional District Judge, as such, had no jurisdiction and the objection on the jurisdiction issue could be raised at any stage. Reliance is placed upon **Dr. Jagmittar Sain Bhagat Vs.**

Dir.Health Services, Haryana & others 2013 (10) SCC 136, to this effect. Resultantly, it was argued that the partition deed (Ext.P-1) had several co-sharers who are not party and a mere agreement to sale, would give no right and there was no division, as such, and there was no specific portion allotted to the plaintiffs.

Mr.Amit Jain, Advocate, on the other hand, has justified the order of transfer, in the peculiar facts and circumstances, as the Trial Court had written to the District & Sessions Judge for recusal and it was on that action had been taken and the matter had been assigned to the Addl.District Judge. Reference has been made to Sections 21 & 24 of the Code of Civil Procedure, to submit that the power was there to try and dispose of the suit under Section 24(b)(i) and for the purpose of that Section, the Addl.District Judge would be subordinate, as such, for the purpose of just decision. Reference was also made to provisions of Section 24 of the Punjab Courts Act, 1918, to submit that District Judge was the Principal Civil Court of Original Civil Jurisdiction and had the power to try the suit, as the Court of Original Jurisdiction and therefore, the preliminary objection is without any basis. It was further submitted that the issue was never raised before the Additional District Judge and neither there was any objection taken in the grounds of appeal and therefore, the same was not tenable and could not be raised, at this stage.

The issue of tenancy also was not proved as there was no proof of payment of any rent to any of the previous owners of the land and there was no contract and evidence to that effect. The detailed

finding, as such, had come that the stray entry, as such, would not make the defendant entitled to interfere and therefore, give a right of possession to continue in the land on the strength of the stray entry in the revenue record.

In order to appreciate the controversy, it is important to notice the background of the case which pertains to 46 kanals 18 marlas of land. The details of the area have been mentioned in the relief clause of the Addl.District Judge and need not be referred again, for the purposes of brevity.

The ownership of the land initially was of one Tulsa, which devolved upon Kanshi Ram, his son, who further had 6 legal heirs, including Sunil and Krishan, the sons. Some land was sold to Vinod Kumar and Ashwani Kumar, sons of defendant No.2, Vishnu Dutt, by the heirs of Kanshi Ram, whereas another patch of land was sold to Jeet Singh, Gurcharan Singh and Harpal Singh, defendants No.3 to 5. A partition deed dated 28.04.1980 (Ext.P-1) was executed whereby 78 kanals 18 marlas of land fell to defendants No.3 to 5 whereas Vishnu Dutt got 63 kanals 15 marlas. Thereafter, an agreement to sell dated 06.04.1981 (Ext.P-2) was made by defendants No.3 to 5 in favour of the plaintiffs of land measuring 46 kanals 18 marlas and in pursuance of that agreement, even sale deeds had been executed during the pendency of the litigation on 13.05.1981 (Exts.P-4 & P-5). The entry in favour of the appellant in the revenue record was made on 16.04.1981 by the Kanungo which led to the filing of the Civil Suit on 28.04.1981, claiming

declaration and injunction. During the pendency of the suit, proceedings under Section 145 Cr.P.C. were initiated and the receiver was appointed to take possession of the land.

The defence of the present appellant in the suit filed was that the plaintiffs did not have any legal right, as such, and the suit was collusive between the plaintiffs and the other defendants and there was an earlier litigation *inter se* the parties. The tenancy rights of the defendants could not be extinguished, through the mode of the present suit, which was not maintainable. The defendants were not party to the documents and the partition deed was never been signed by all the co-sharers. The co-sharers, Vinod Kumar and Ashwani had not been impleaded in the suit. Total land was stated to be under the cultivation of the defendants as a *gair marusi*. It was denied that defendants No.3 to 5 had started cultivation on any portion of the land from Kharif, 1990 and the existence of the agreement to sell dated 06.04.1981, as such, was denied. It was denied that there was any disobedience of the instructions of the Financial Commissioner and that the plaintiffs had never secured possession of the suit land from defendants No.3 to 5. Defendant No.2- Vishnu Kumar, in his written statement, took the plea that Vinod Kumar and Ashwani Kumar were co-sharers and needed to be impleaded and supported appellant/defendant No.1 that he was in cultivating possession as a tenant.

The Trial Court framed the following issues:

1. Whether the plaintiffs are entitled to the declaration prayed for in view of the agreement to sell dated

6.4.1981? OPP

2. Whether the instant suit is liable to be stamped U/S 10 C.P.C.? OPD

3. Whether the instant suit is bad for non-joinder and misjoinder of necessary parties? OPD

4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD

5. Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP

6. Whether the suit is not maintainable in the present form? OPD

7. Whether the defendant No.1 is in possession of the suit land as tenant as gair maroosi? OPD

8. Relief.

After evidence, the case was, thereafter, argued on 11.09.1986 and was adjourned for further arguments on 16.09.1986 before the Sub-Judge, Fazilka. On the subsequent date, as per the order dated 16.09.1986, due to certain personal reasons, the Officer did not want to try the case and sent the same to the District Judge for transfer to some other Court. Even the complete record was sent along with the file to the District Judge, Ferozepur, for 24.09.1986.

On the said date, the District Judge, Ferozepur, accepting the reasons given in the reference, withdrew the suit filed from the Court of the Sub-Judge 2nd Class and transferred it to the Court of Shri Surinder Singh Grewal, Addl.District Judge, Ferozepur, for disposal, as per law, in the presence of the parties who were duly represented by the counsels. The suit was received on the same date by the transferred Court and was fixed for arguments on 01.10.1986, on which date, the arguments were

partly heard and resultantly, the judgment was pronounced on 03.10.1986. At that point of time, no objection, as such, was raised by the appellant to the said procedure and as noticeable, neither any objection has been taken in the grounds of appeal nor any challenge was raised to the procedure which had been followed. It was only during the arguments, the said issue, as such, had been raised, which is now being addressed. Section 24 of CPC reads as under:

“24. General power of transfer and withdrawal.--

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it, and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section. --

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;
 - (b) "proceeding" includes a proceeding for the execution of a decree or order.
 - (4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.
 - (5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."
- Similarly, the provisions of Sections 21, 24 & 25 of the

Punjab Courts Act, 1918 read as under:

“21. Additional District Judges. - (1) The State Government, in consultation with the High Court, may also appoint Additional District Judges to exercise jurisdiction in one or more courts of the District Judges.

(2) Additional District Judges shall have jurisdiction to deal with and dispose of such cases only as the High Court, by general or special order, may direct them to deal with and dispose of or as the District Judge of the District may make over to them for being dealt with and disposed of:

Provided that the cases pending with the Additional District Judges immediately before the 28th day of June, 1963, shall be deemed to be cases so directed to be dealt with or disposed of by the High Court or so made over to them by the District Judge of the District as the case may be.

(3) While dealing with and disposing of the cases referred to in sub-section (2), an Additional District Judge shall be deemed to be the Court of the District Judge.

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24. District Court to be principal Civil Court of original jurisdiction-The Court of the District Judges shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

25. Original jurisdiction of District Judges in suits. - Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.”

A perusal of the provisions of Section 24 CPC would go on to show that under Sub-clause 1(b)(i), power to try and dispose of any suit which is withdrawn, which can be done on its own motion by the High Court or the District Court. Section 24 of 1918 Act defines the Principal Civil Court of Original Jurisdiction, which is the District Court. Section 2(4) of the Code of Civil Procedure, 1908 provides as under:

“2(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court.”

As per the provisions of Section 24(3) CPC, the Court of the Addl. District Judge is to be subordinate to the District Judge only for the purpose of this section. Reliance can be placed upon the judgment of the Full Bench in **Gangagir Chela Vs. Rasal Singh & another AIR 1965 Punjab 472**, wherein the issue arose that whether the Addl. District Judge was competent to try and dispose of a suit under Section 92 CPC, as an objection had been raised that the matter should be decided by the District Judge. Resultantly, it was held that the District Judge can assign the business assigned to him to the Addl. District Judges and they can deal with and dispose of the suit in the same manner as the District Judge and there is no bar and prohibition in the exercise of the powers. Resultantly, the question posed by the Full Bench was answered in the negative and the objection, as such, that the Addl. District Judge was not supposed to

try and dispose of a suit under the Code of Civil Procedure, was decided in that manner.

The said judgment was followed by the Division Bench judgment of the Allahabad High Court in **Ram Kishore Sharma & others Vs. Gopi Nath & others 1979 AIR (Allahabad) 281.** In **Smt. Shakuntala Devi & others Vs. Amir Hasan & others 1986 AIR (Allahabad) 234,** wherein the issue arose as to the rejection of the application filed for transfer of the Court from the Additional Munsif. An argument was raised that the Additional District Judge had no such jurisdiction and the District Judge was the Principal Court of Civil Jurisdiction. The same was answered, as such, against the appellant by holding that the Additional District Judge had powers to pass order on an application under Section 24 and the order was not without jurisdiction.

The Apex Court in **Kali Charan & others Vs. Sudha Rani & others 2011 (15) SCC 199,** noticed that suits were pending before the Civil Court at Yamunanagar and at the Civil Court at District Panchkula and clubbed them together and asked the District Judge, Panchkula to decide the cases himself or assign them to one Judicial Officer, which power would also be exercised under Section 24.

In **Karam Chand Vs. Jasbir Singh 2012 (2) PLR 328,** Section 24 was considered and it was held that the power under Section 24(b)(i) would empower the District Judge to dispose of the suit, while deciding an application under Section 24.

The Apex Court in **Abdul Rahman Vs. Prasony Bai &**

another 2002 SCR 260 held that the High Court has the jurisdiction to withdraw any suit pending in any Court subordinate to it and try or dispose of the same, in view of Section 24. Relevant portions read as under:

“15. It may be true that normally the High Court does not pass an order under Section 24 of the Code of Civil Procedure in a disposed of proceeding. However, in terms of Section 24 of the Code of Civil Procedure, indisputably the High Court had the requisite jurisdiction to withdraw any suit pending in any court subordinate to it and try or dispose of the same inter alia on its own motion; wherefor even no notice is required to be issued.

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16. A bare perusal of the said provision leaves no manner of doubt that the High Court had the requisite jurisdiction to suo moto withdraw a suit to its file and adjudicate itself all or any of the issues involved therein.”

The argument which has, thus, been sought to be raised, at a belated stage, thus, is without any basis, as the Additional District Judge would be a subordinate Court to the District Judge for the purpose of Section 24 of CPC, which gives the power of transfer to the District Judge. Thus, while dealing with the case made over to him, the Additional District Judge would be deemed to be a Court of the District Judge under Section 21(3) of the 1918 Act.

The judgment which has been relied upon in **M/s Hindustan Construction Company Ltd.** (supra), is distinguishable as the issue pertained to Arbitration wherein, on an earlier occasion, the Apex Court had appointed a retired Supreme Court Judge as an Arbitrator. An award

had been passed by the said Arbitrator and the same was challenged before the Civil Court, which was objected to on the ground that only the Apex Court would have jurisdiction to set aside the said award. The same was, accordingly, decided by holding that a remedy of appeal, as such, would be taken away if the matter was only to be decided by the Apex Court and therefore, it was, in such circumstances, the objections filed before the Civil Court were permitted to continue. Therefore, the judgment does not have a bearing on the dispute herein which has been raised whereby Section 24 of 1918 Act covers the field. The proceedings which had to continue and the manner as to how the suit had to be called for in the Court by the District Judge and assigned to the Addl.District Judge has already been noticed. It is to be noticed that for the provisions of the above-said section that the Addl.District Judge is only subordinate, for the purpose of the administration of justice, to the District Judge but otherwise, equivalent and the right of appeal, as such, is not being taken away as the appellant is also being heard on merits.

The judgment of **Dr.Jagmittar Sain Bhagat** (supra) was an issue wherein it was held that under the Consumer Protection Act, the consumer forums would not, as such, have any jurisdiction qua the retiral benefits and therefore, any decree passed was a nullity and thus, could not be applicable to the facts and circumstances of the present case.

Mr.Jain has taken this Court to the record of the case and it has rightly been pointed out that the appellant-defendant did not even chose to come forward to stand by his tall claim of being a tenant and

therefore, it should be adversely held against him, since these facts were personal to his knowledge. Reliance can be placed upon **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. 2005 (1) RCR (Civil) 240**, which has been followed by **Man Kaur (Dead) By Lrs vs Hartar Singh Sangha 2010 (10) SCC 512** that once a person who possesses the authority does not come forward to depose, an adverse inference, as such, is to be drawn against him. The relevant portion reads as under:

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney

holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

Thus, the appellant was a person who had personal

knowledge and the attorney could not depose and give evidence in place of the principal for transactions or dealings of the principal, who alone can give information about the transaction. It is not the case where the person was carrying business through authorized manager or of persons residing abroad nor it was a case of husband and wife exclusively managing their business and on behalf of her or him or on account of ailment of an older person and therefore, necessarily an adverse inference has to be drawn against the appellant.

As noticed, the case of defendant No.1/appellant is only a case of tenancy. In the statement made before the Magistrate under Section 125 Cr.P.C., he had also admitted that he had not remained in possession of the land as a tenant which has been placed on record as PW-12/1 which had also been noticed by the Addl.District Judge. It is also pertinent to notice that vide Ext.PW-14/1, an enquiry was made by the SDO (Civil) Ferozepur against the revenue officials and a finding has been recorded that the revenue officials, as such, were responsible for not following the prescribed procedure while changing the entry. Relevant part of the report reads as under:

“14. The fact that there had been no tenant on the land in dispute finds support from an earlier report submitted by the S.D.O.(C), Fazilka, to the Deputy Commissioner vide his Memo. No.5133/SDA, dated 23.11.1981, wherein it has been categorically been mentioned that:-

“According to the revenue record, there was no tenant

on the land measuring 142 Kanal-13 Marlas comprising Khasra Nos.16M/13, 17, 18, 23, 24, 25, 19M/3,4,5,6,7,8,13,14,15,16,17,18 and 25 situated within the revenue estate of V.Azimgarh was under the self cultivation of the landowners or their sons.”

When the land in dispute had been in self cultivating possession of the landowners or their sons, it is quite evident that Ram Chand had never been the tenant on the land in dispute & girdawari entries in his name had not been correctly made though this aspect is pending before competent court.

Submitted please.”

The claim that the inspection had been done in the present of Ram Kumar, was rebutted by the plaintiffs' witness-Ram Kumar, PW-1 himself and PW-8 Ami Chand, who had stated that the land had been cultivated by the plaintiffs and earlier by the vendors. Similarly, Harpal Singh, PW-2 had also stated that at the time of purchase of the land, which was cultivated by them, possession had been delivered to the plaintiffs. Sunil Kumar son of Kanshi Ram, who has appeared as PW-10 was also examined, who supported the case of the plaintiffs and that the present appellant was never a tenant under their father.

Mukhtiar Singh, DW-5, Kanungo himself, in his cross-examination, had stated that the entry in the khasra girdawari was made after inspection. He stated that no application had also been filed to change the revenue entries but the defendant was present at the time of the inspection. Even the brother, Sadhu Ram the general power of attorney, who appeared as DW-6 could not produce any right of tenancy and no receipt of payment of rent and corresponding entry in the revenue

record.

In such circumstances, this Court is of the opinion that the findings which have been recorded, as such, in the judgment under appeal, are justified. The onus of issue No.7 was upon the appellant that he had to prove his status as a *gair marusi* tenant, on his land, to protect his possession, since the threat was from him interfering. Once having failed to appear in the witness-box, an adverse inference has to be drawn against him, as such and the issue has rightly been decided against him. In such circumstances, the argument which has been raised that the partition deed, as such, would not give a right, would be without any basis. It is to be noticed that the plaintiffs have also become owners during the pendency of the suit, by virtue of sale deeds (Exts.P-4 & P-5) but have been kept out of possession for the last over 30 years, on account of the Receiver having been appointed, even though the order of appointing the Receiver was quashed vide order dated 28.05.1985. However, on account of the Sub-Judicial Magistrate holding that the appellant was in possession over the land as *gair marusi* tenant, the litigation ensued till this Court in CRR-569-1986, filed by the appellant which was dismissed but status quo was directed to be maintained since the matter was pending before the Civil Court. Thus, the possession has remained with the Receiver for the last 33 years on account of one stray entry in favour of the appellant, on account of the misuse of the authority of the revenue official.

Thus, this Court is of the firm opinion that the findings

which have been recorded are justified, in the facts and circumstances and no question of interference in the well reasoned order arises. Resultantly, the present appeal is, hereby, dismissed. It is clarified that in view of the present dispute, as such, having been decided in favour of the plaintiff/respondents No.1 to 4, the Receiver shall hand-over possession to them.

November 20th, 2018
sailesh

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*