

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

RSA No.4260 of 2008

Date of Decision.22.02.2018

Sawan Singh (since deceased) through LR'sAppellant
Vs
Gram Panchayat and othersRespondents

2. COCP No.2487 of 2016

Sawan Singh (since deceased) through LR'sAppellant
Vs
Sheela Devi and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Avnish Mittal, Advocate
for the appellant.

Mr. V.K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate
for respondent Nos.2 to 5.

Ms. Sunita Nambiar, Advocate for
Mr. Balkar Singh, Advocate
for respondent No.1 in COCP No.2487 of 2016.

-.-

AMIT RAWAL J.(ORAL)

This judgment of mine shall dispose of one regular second appeal bearing No.4260 of 2008 and another COCP bearing No.2487 of 2016 filed for alleged violation of status quo order dated 09.03.2009. Since the contempt petition has arisen from the interim order passed in the aforementioned regular second appeal, the facts are being taken from the regular second appeal.

The plaintiff-Sawan Singh instituted the suit claiming possession of land measuring 2 marlas by removal of all the super-structures built by defendant No.1 comprised in Khewat/Khatauni No.536/620 bearing Khasra No.28//37/1 as per jamabandi for the year 1990-91 bounded by North property of Madan Lal, South road, East Road and West property of

the plaintiff situated at Kotla Road, near Police Station, Sadhaura, District Yamuna Nagar and for recovery of ₹1775/- as compensation for illegal use and occupation on the premise that the plaintiff had purchased property from Kewal Ram s/o Mukandi Lal and Rameshwar Das son of Shiv Parshad vide sale deed dated 20.12.1979. The defendant No.1, erstwhile Municipal Committee, Sadhaura had taken the suit land on licence from its previous owners more than 70 years ago for setting up an octroi post with the condition that it will be exclusively used for the purpose of octroi post and when the octroi post would be shifted, the suit land would be returned back to its owners. In the month of January, 1993, the erstwhile Municipal Committee in utter violation of the terms and conditions of the licence started constructing three shops on the suit land despite being objected to it, which necessitated the plaintiff to terminate the licence by moving application on 15.12.1992. After construction of the shops on the suit land, the erstwhile Municipal Committee leased out the shops to defendant No.2 to 4 and started recovering ₹1775/- as lease money. Statutory notice was also served upon the defendants asking them to vacate the land and also pay ₹1775/- per month as compensation for illegal use and occupation of the suit land. The suit aforementioned was filed on 29.03.1996.

Upon notice, defendant No.1 appeared and filed the written statement denying the ownership of the plaintiff, much less, the possession but averred that the same was owned and possessed by defendant No.1, Municipal Committee, Sadhaura. When the shops in question were constructed, the plaintiff did not raise objection and it was in the domain of the Municipal Committee, being owner, to lease out the property in the manner and mode it wanted. Defendant No.2 to 4 did not file written

statement as defendant No.3 was proceeded ex parte on 17.5.1996 and defendant No.2 and 4 were proceeded ex parte on 23.04.1997.

Replication was filed by plaintiff in which he controverted the averments made in the written statement.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner of the suit land? OPP*
- 2. Whether the defendant No.1 was licensee in respect of the suit land and whether his licence has been revoked?*
- 3. Whether the plaintiff is entitled to the compensation on account of illegal use and occupation of the suit land by defendants? OPP*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Relief.”*

In order to prove his case, the plaintiff examined and exhibited the following witnesses/documents and closed the evidence:-

PW1	Panch Ram
PW2	Sumer Chand, Record Keeper.
PW3	Mansha Ram
PW4	Raj Kishan, Record Keeper
PW5	Nanu Singh
PW6	Sawan Singh, plaintiff.

Exhibited documents.

Ex.P1	Original sale deed dated 20.12.1979.
Ex.P2	Certified copy of demarcation report.
Ex.P3	Certified copy of map.
Ex.P4	Certified copy of presence sheet.
Ex.P5	Copy of application dated 15.12.1992.
Ex.P6	A.D.
Ex.P7	Copy of notice dated 20.1.1996.
Ex.P8 to P11	Postal receipts.
Ex.P12 to P14	Undelivered registered letters.

Ex.P15	A.D.
Ex.P16	Reply to notice.
Ex.P17	Aksh-sajra
Ex.P18	Copy of jamabandi for the year 1990-91
Ex.P19	Copy of mutation No.2726
Ex.P20	Copy of mutation No.4817.
Ex.P21	Copy of mutation No.5885.
Ex.P22	Copy of mutation No.5711.
Ex.P23	Copy of Khatauni Istemaal.
Ex.P24	Copy of Naksha Haqdar.
Ex.P25	Copy of jamabandi for the year 1944-45.

In support of its case, the defendant No.1, erstwhile Municipal Committee, examined and exhibited the following witnesses/documents and closed the evidence:-

DW1 - Raj Kumar, Sarpanch of defendant No.1 Gram Panchayat.

Exhibited documents.

Ex.D1 - Copy of house tax assessment register for the year 1995-96.

Ex.D2 - Copy of house-tax assessment register for the year 1990-91.

Ex.D3 - Copy of list of property of defendant No.1.

Ex.D4 to D6 - Copy of site plans.

Ex.D7 - Copy of reply to the notice.

Ex.D8 - Resolution passed in favour of DW1 Raj Kumar, Sarpanch by the defendant No.1 Gram Panchayat, Sadhaura.

In rebuttal, the plaintiff tendered copy of jamabandi for the year 1969-70 as Ex.P26.

During the pendency of the aforementioned suit, the Municipal Committee was dissolved and the property vested in the Gram Panchayat,

Sadhaura, which was impleaded through BDPO vide order dated 21.08.2001.

On the basis of the aforementioned evidence, the trial Court found that the erstwhile owner of the property namely Kewal Ram was the owner in possession of the suit land, which was purchased by the plaintiff-Sawan Singh vide registered sale deed dated 20.12.1979, Ex.P1, for consideration of ₹7000/- against which mutation, Ex.P21 was sanctioned in his favour and subsequent entries were recorded in the revenue record in his name i.e. jamabandi Ex.P18. Ex.D1 and D2, assessments registers revealed that premises were taken by the Municipal Committee on lease as licensee for the purpose of octroi post. The trial Court decreed the suit holding the plaintiff to be owner of the property, validly invoked the licence w.e.f. 30.12.1992 and also held entitled to possession, directing the defendant No.1 to hand over the possession of shops in question within a period of two months from the date of passing of the judgment with further direction to pay compensation to the plaintiff for illegal use and occupation of the suit land w.e.f. 30.12.1992 equal to the amount of rent of shops in question received by defendant No.1 from the tenants till the date of delivery of possession along with prevailing rate of interest being charged by a nationalized bank after deducting actual cost of construction of the shops as per the record and in case, the tenants were found in arrears of rent, they were liable to pay the said amount of arrears of rent till the date of delivery of possession to the plaintiff.

The Gram Panchayat challenged the aforementioned judgment and decree by filing Civil Appeal bearing No.125 of 2005 on the premise that since during the pendency of the suit, the land had vested with the

Gram Panchayat, therefore, the Civil Court did not have jurisdiction to adjudicate the claim of possession, in view of the fact that legal plea could always be taken particularly being a subsequent event. In other words, it was held that the jurisdiction of the Civil Court was ousted as per the provisions of Section 13 of the Punjab Village Common Land Act, 1961.

The lower Appellate Court on interpretation of the provisions of Section 13 of the Punjab Village Common Land Act held that the Civil Court seized of the jurisdiction even in cases where the suit was instituted prior to the enactment of the Section and allowed the appeal on the premise that the Civil Court could not decide the issue whether the land could vest in the Gram Panchayat or not. It is in this background, the present regular second appeal has been filed.

The aforementioned regular second appeal was admitted by this Court vide order dated 09.03.2009 on the following substantial questions of law:-

- “1. Whether the learned lower appellate Court could reverse the judgment and decree passed by the trial Court on a point which was neither pressed or claimed in issue by defendant/respondents?*
- 2. Whether the provisions of Order 41 Rule 25 CPC are mandatory or directory in nature?*
- 3. Whether the learned lower appellate Court can frame and decide an issue ipso facto without calling for a report or recording of a fresh evidence from the trial Court?*
- 4. Whether judgment and decree passed by the learned first appellate Court while reversing a well reasoned and detailed*

judgment and decree of the trial Court is perverse the same being based on mis-reading and non-reading of evidence?

Mr. Avnish Mittal, learned counsel appearing on behalf of the appellant submitted that the decision rendered by the lower Appellate Court is not sustainable in the eyes of law as it was enjoined upon an obligation to examine a particular fact whether the Civil Court shall continue to have jurisdiction to adjudicate upon the rights of the parties, even if during the pendency of the suit, land had vested in the Gram Panchayat and therefore, the suit could not be dismissed owing to the provisions of Section 13 of the Punjab Village Common Land Act. In support of his contention, he relies upon the judgment of Hon'ble Supreme Court in **Rajender Bansal and others Vs. Bhuru (D) through LRs and others 2017(4) SCC 202** to contend that where there is a right, there is a remedy and it can be excluded only by substantial legislation expressly extinguishing the said right. Nobody should be allowed to suffer because of the act of the Court. Rights of the parties stood crystallized on the date of the institution of the suit and the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated but not in the manner of ousting the jurisdiction of the Civil Court on the premise that upon dissolution of Municipal Committee during the pendency of the suit and vesting of the land in the Gram Panchayat, the provisions of Section 13 of the Punjab Village Common Land Act would come into operation. On similar lines is the ratio decidendi culled out by Hon'ble Supreme Court in **Bhanwar Lal and another Vs. Rajasthan Board of Muslim Wakf and others 2014 (16) SCC 51**. Therefore, the matter in controversy is required to be revisited by the lower Appellate Court as the lower Appellate Court had not dealt with

the merit of the matter except not suited the appellant-plaintiff for want of jurisdiction of the Civil Court, thus, urges this Court for rendering the substantial questions of law in favour of the appellant-plaintiff.

Per contra, Mr. V.K. Jain, Senior Advocate assisted by Mr. Ravi Kadian, learned counsel appearing on behalf of the respondent-defendants referred to the provisions of Section 13 of the Punjab Village Common Land Act as applicable to the Haryana to contend that jurisdiction of the Civil Court is expressly barred to decide the issue of ownership, for, the respondent-defendants had emphatically denied the ownership of the plaintiff. The finding of the lower Appellate Court is based upon the appreciation of judgment rendered in *Gram Sabha Balad Kalan and another Vs. Sarwan Singh and others 1981 PLJ 311* where it has been held that the provisions of Section 13 of the Punjab Village Common Land Act would be applicable retrospectively. Since the Civil Court did not have jurisdiction owing to the subsequent event i.e. dissolution of the Municipal Committee, Sadhaura, the suit was not maintainable against the Gram Panchayat, rightly so, the lower Appellate Court being last court of fact and law in appeal set aside the judgment and decree of the trial Court, thus, urges this Court for dismissal of appeal by holding that the substantial questions of law do not arise.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Mittal. There had been instances where the landlord for seeking ejectment against the tenant instituted the civil suit during the exemption period as per Haryana Rent Urban (Control of Rent and Eviction) Act, 1973, however, during the pendency of the suit, the exempted period of 10 years was over.

In such eventuality, during the pendency of suit or even at the first appellate stage or second appellate stage, on expiry of the exemption period or area falling within the jurisdiction of Municipal Limit, the question arose is whether in view of the subsequent event, the tenant under such circumstances would be ejected only under the Rent Act or in the manner and mode as adopted by the landlord. In the **Rajender Bansal's case** (supra), similar proposition arose in respect of the premises where the suit for eviction of a tenant was instituted in Civil Court and the Rent Act i.e. Haryana Rent Urban (Control of Rent and Eviction) Act, 1973 became applicable during the pendency of the suit. The Hon'ble Supreme Court while dealing with the issue held that the Civil Court shall continue to have the jurisdiction to adjudicate the right of the parties even where the period of exemption had expired during the pendency of the suit, for, rights of the parties stood crystallized on the date of institution of the suit and therefore, the law applicable on the date of filing of the suit would continue to apply until the suit is disposed of or adjudicated. The aforementioned proposition of law has been laid down by Hon'ble Supreme Court, in a matter decided by this Court, by relying upon various judgments as well as three Bench judgment of Hon'ble Supreme Court rendered in **Shri Krishan alias Krishna Kumar Vs. Manoj Kumar 1998(2) SCC 710.** The relevant paragraphs 14, 21 and 22 reads as under:-

“14. Arguments of both sides have been dealt with by the Court, thereafter, in the following manner:

“7. Before referring to the decisions cited before us it is necessary to advert to the provisions of the Act. We have already quoted [Sections 1\(3\) and 13\(1\)](#). Apart from the legislative exemption contained in [Section 1\(3\)](#) there is a provision in [Section 3](#) of the Act enabling the State

Government to exclude any building or any class of buildings from the purview of the Act. Sections 4 to 8 deal with fair rent, deposit of rent etc. Sections 9 and 10 refer to the amenities to be provided to the tenant. Section 11 prevents conversion of a residential building into a non-residential building except with the permission in writing of the Controller. Section 12 deals with the situation where a landlord fails to make the necessary repairs. Section 13 sets out the grounds on which eviction can be sought by a landlord. Section 13-A prescribes special procedure for disposal of the application by a landlord in certain cases such as members of the Armed Forces, government employees etc. Section 14 prevents reopening of decisions which have become final. Section 15 prescribes appellate and revisional authorities. Section 16 provides that an authority exercising powers under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Civil Procedure Code. Sections 17 to 23 deal with order as to costs, execution, power to transfer proceedings, penalties etc. Section 24 repeals the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949).

8. There is no provision in the Act taking away the jurisdiction of a civil court to dispose of a suit validly instituted. There is also no provision preventing the execution of a decree passed in such a suit. Section 13 (1) does not expressly refer to execution of a decree for possession. On a reading of all the provisions of the Act, it is evident that it has not prevented a civil court from adjudicating the rights accrued and the liabilities incurred prior to the date on which the Act became applicable to the building in question. If the legislature had intended to take away the jurisdiction of the civil

court to decide a suit which had been validly instituted, it would have been worded differently. The purpose for which the exemption is granted statutorily under [Section 1\(3\)](#) is to encourage construction of new buildings. That purpose would be defeated if the owner of the building is deprived of his right to get possession of the building unless he gets a decree within a period of ten years from the date of its completion. In fact the logical consequence of the argument of the appellants if accepted would be that even if a decree is obtained by the landlord within ten years from its completion it cannot be executed after the expiry of the said period of ten years as such execution would not be in accordance with the provisions of the Act. It is common knowledge that a proceeding in a civil court for recovery of immovable property could be dragged on by the defendant easily for a period of ten years or more and thereby any tenant whose tenancy had been terminated validly before the suit would successfully make the proceeding infructuous by prolonging the litigation. The argument of the appellants cannot be accepted as otherwise the purpose of exemption would get defeated.”
(emphasis supplied).

21. When we apply the principles laid down above to the instant case, we find that this case would fall in the category of *Atma Ram Mittal and Mansoor Khan etc.* as under the scheme of the [Rent Act](#), no protection to the ex-tenants is provided and no provision is made excluding the jurisdiction of civil courts in respect of pending cases, expressly or impliedly. On the other hand, in the facts of the present case, it needs to be highlighted again that the respondents had not only sublet the premises but had not paid rent for a period of 14 years. His defence was struck off by the civil court and ultimately suit was even decreed. It is only during the pendency of the appeal that the notification was issued covering the area where suit premises

are situate under the [Rent Act](#). It will be travesty of justice if the appellants/landlords are deprived of the fruits of the said decree.

22. We are, thus, unable to accept the view taken by the High Court. Accordingly, this appeal is allowed and the judgment of the First Appellate Court as well as High Court is set aside. As the only contention which was taken by the respondents before the First Appellate Court, challenging the decree of the trial court, was that civil court ceased to have jurisdiction, the said first appeal preferred by the respondents stands dismissed thereby restoring the decree passed by the trial court.”

Another question which arose for consideration before the Hon’ble Supreme Court in **Bhanwar Lal’s case** (supra) was that if during the pendency of suit for possession and claim to the rent instituted before the Civil Court, the Wakf Act 1995 came into force then in such eventuality, it is only the Wakf Tribunal that would have jurisdiction or the Civil Court shall continue with trial and the answer was that the Civil Court would be competent to adjudicate and decide the same. Para 23 of the same reads as under:-

“23. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of Ramesh Gobind Ram (supra), suit for possession and rent is

to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by [Section 6](#) or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decide such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.”

The lower Appellate Court has committed illegality and perversity in non-suiting the plaintiff on the ground of lack of jurisdiction in the Civil Court to try the suit owing to the dissolution of Municipal Committee and vesting of the property in the Gram Panchayat. Therefore, the substantial questions of law framed in the second appeal are decided in favour of the appellant-plaintiff and against the respondents-defendants. Since the lower Appellate Court had not decided the appeal on merits and confined its decision on the objection of jurisdiction, I deem it appropriate to remit the matter back to the lower Appellate Court which shall decide the same on merits as the jurisdiction of the Civil Court has been held to be

maintainable. This Court is sanguine of the fact that the suit was filed in the year 1996, therefore, the lower Appellate Court shall make an endeavour to decide the appeal as expeditiously as possible and preferably within a period of six months from the date of appearance of the parties before it.

In view of the aforementioned, the judgment and decree passed by the lower Appellate Court is set aside and the regular second appeal is allowed. The parties shall appear before the lower Appellate Court on 22.03.2018.

Keeping in view the decision taken in the regular second appeal, the contempt petition is also disposed of.

(AMIT RAWAL)
JUDGE

February 22, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes