

In the High Court of Punjab and Haryana at Chandigarh.

RSA No. 2549 of 2011(O&M)
Date of Decision:- 6.7.2018

Gian KaurAppellant

Versus

Kuldeep Raj and othersRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. M.S.Kang Advocate for the appellant.

Mr. H.K.Aurora, Advocate for the respondents

GURVINDER SINGH GILL, J.

1. This appeal has been preferred by the unsuccessful plaintiff Gian Kaur, who lost in both the Courts below. The appellant-plaintiff had filed a suit seeking permanent injunction to restrain defendants from dispossessing her from land measuring 17 Kanals and 9 Marlas, forcibly or in execution of order dated 20.11.2003 passed by SDM-cum-AC 1st Grade, Hoshiarpur, under section 14-A of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the 1953 Act'). As per case of the appellant-plaintiff, previously her husband namely Parduman Singh was in occupation of the suit property as a tenant under the previous owner Joga Singh. Joga Singh had filed an application seeking ejectment of the plaintiff and her son in the Court of AC 1st Grade, Hoshiarpur which was allowed on 21.11.1975 wherein it was ordered that the plaintiff and her son shall not be dispossessed from the suit property unless they are accommodated on some surplus area by the State Government. The

plaintiff further averred that Joga Singh sold the suit property in the year 1999 to the defendants who filed an application seeking ejectment of Balbir Chand, son of the plaintiff, who was living abroad without impleading the plaintiff as a party and obtained *ex-parte* order of ejectment against Balbir Chand and further under garb of said ejectment order against Balbir Chand, tried to take possession of the suit property from the plaintiff. The appellant-plaintiff asserted that she could not be dispossessed before she is resettled on some surplus land as per earlier order dated 21.11.1975 of A.C 1st Grade, and that the subsequent *ex-parte* order of ejectment, in any case, was a nullity having been obtained by fraud and by concealment of material facts.

2. The respondents-defendants, in reply, raised preliminary objection as regards jurisdiction of the Civil Court to try of the suit and as regards *locus-standi* of the plaintiff to file the suit. On merits the defendants feigned ignorance about the earlier ejectment petition filed against a plaintiff and her son by Joga Singh in which order date 21.11.1975 had been passed. A stand was taken that the defendants have every right to seek possession on the basis of order passed under section 14-A(i) of 1953 Act. The defendants further asserted that in fact possession of a part of the land has already been delivered to the defendants and it is only 2 Kanals and 16 marlas of land which is left with the plaintiff as he had sown crops on the said land and that the defendants had already deposited cost of the crops with the executing Court. The defendants denied that Balbir Chand was residing abroad or that they had obtained ejectment order by concealing any material fact or by playing fraud.
3. The parties were put to proof on the following issues:

1. Whether plaintiff is entitled for permanent injunction as prayed for? OPP.
 2. Whether the plaintiff has no locus-standi to file the present suit? OPD.
 3. Whether the Civil Court has no jurisdiction to try the present suit? OPD.
 4. Whether the plaintiff has not come to the Court with clean hands? OPD.
 5. Relief.
4. The plaintiff herself stepped into witness box as PW-1 and also led documentary evidence. The defendants examined DW-1 Pal Singh and closed their evidence.
 5. The learned lower Court, upon appraisal of evidence on record, found that there is no case for grant of any permanent injunction and consequently dismissed the suit. Aggrieved with the same, the plaintiff filed an appeal but the same was also dismissed by the learned lower Appellate Court on 3.5.2011, which has been challenged by the plaintiff by way of filing the present appeal.
 6. The learned counsel for the appellant, while assailing the impugned judgement has submitted that once the SDM-cum-AC 1st Grade had passed an order for accommodating the appellant-plaintiff before dispossessing him from the demised premises, it was not open to the defendants to have filed another ejectment application and that too by concealing factum of earlier application for ejectment filed by Joga Singh from whom the defendants had purchased

the suit property. The learned counsel has further submitted that in fact the second application was not maintainable at all.

7. The learned counsel for the respondents-defendants, on the other hand has submitted that the defendants had sought ejectment of the present appellant on grounds of non-payment of rent which is specifically provided for under provisions of Section 14-A of the 1953 Act and that though the earlier ejectment order passed in the year 1975 was not in their knowledge but in any case the existence of such earlier order would not debar the respondents from seeking ejectment of the applicant on grounds of non-payment of rent, which had accrued to them subsequently. The learned counsel further submitted that in any case the jurisdiction of the Civil Court is barred and the appellant should have availed of remedy of statutory appeal available to him so as to challenge ejectment order dated 20.11.2003 rather than seeking an injunction from the Civil Court.
8. The rival submissions addressed before this Court pose a question to this Court as to whether a tenant who has once been given protection in terms of Section 9-A of the 1953 Act, against his dispossession till he is accommodated elsewhere, gets a perpetual right to remain in possession even if he violates the cardinal condition of relationship of landlord and tenant i.e payment of rent, so as to render the 'small land owner' helpless.
9. Before proceeding to consider the aforesaid question, it is apposite to bear in mind the relevant provisions of the statutes dealing with the issue. "Tenant" is defined by Section 2(6) of the 1953 Act in the following terms:

“2.(6) “*Tenant*” has the meaning assigned to it in the Punjab Tenancy Act, 1887 (16 of 1887), and includes a sub-tenant, and self-cultivating lessee, but shall not include a present holder, as defined in Section 2 of the Resettlement Act.”

10. Section 4(5) of the Punjab Tenancy Act, 1887 defines “tenant” as under:

“4(5) '*tenant*' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but does not include—

- (a) an inferior landowner; or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm under the Punjab Land Revenue Act, 1887 (17 of 1887), for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it.”

11. Section 9 of the 1953 Act which deals with the liability of a tenant to be ejected reads as follows:

“9. *Liability of the tenant to be ejected.*—

- (1) Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject the tenant except when such tenant—
 - (i) is a tenant on the area reserved under this Act or is a tenant of a small landowner, or
 - (ii) fails to pay rent regularly without sufficient cause,

or

- (iii) is in arrears of rent at the commencement of this Act, or
- (iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate, or
- (v) has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it, or
- (vi) has sublet the tenancy or a part thereof, provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part, or
- (vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the landowner.

Explanation.—For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

(2) x x x ”

12. While section 9 of the 1953 Act lays down grounds for ejectment of tenant, Section 9-A of the 1953 Act provides protection to certain tenants from dispossession. Section 9-A of the 1953 Act reads as under :

9-A : No tenant liable to ejectment under clause (i) of sub-section (1) of the section next preceding shall be dispossessed of his tenancy unless he is accommodated

on a surplus area in accordance with the provisions of section 10-A or otherwise on some other land by the State Government.

13. Section 14-A of the 1953 Act which deals with the procedure for ejectment reads as follows:

“14-A. *Procedure for ejectment and recovery of arrears of rent, etc.—*

Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of Section 9-A—

- (i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (16 of 1887), shall not be affected;

Provided that if the tenant makes payment of arrears of rent and interest, to be calculated by the Assistant Collector, First Grade, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by Assistant Collector, First Grade, either on the day of first hearing or within fifteen days from the date of such hearing, he shall not be ejected;

(ii) x x x

(iii) x x x ”

14. In the present case, it was by invoking provisions of Section 9-A of the 1953 Act that the plaintiff had been extended protection against his dispossession vide order dated 21.11.1975 passed by the Assistant Collector 1st Grade. The relevant extract from the said order (Ex.P-1) reads as follows:

“ From the foregoing discussion it is clear that Joga Singh is a small landowner. He is, therefore, entitled to get the respondents Balbir Chand and Gian Kaur ejected from the land mentioned above and, I ordered accordingly. However, as both the respondents do not own any other land they are entitled for protection under section 9-A ibid and hence they shall not be dispossessed unless accommodated on a surplus area or otherwise on some other land by the State Government.”

15. In view of aforesaid order, there certainly can be no dispute that the plaintiff was required to be rehabilitated before his dispossession from the suit property. Since the landlord himself was a 'small landowner' and would not have any surplus land, therefore it was the State Government which was required to provide some alternate land to the plaintiff. The defendants had filed the ejectment application on grounds of non-payment of rent in the year 2003, i.e. after about 18 years of the earlier ejectment application filed by their vendor Joga Singh in the year 1975. The said application was allowed by A.C 1st Grade, Hoshiarpur, vide order dated 20.11.2003. The operative portion of the order reads as follows:

“ The applicant Pal Singh has appeared as AW-1 to prove their ownership of the land and stated that they were small landowners. Balbir Chand cultivates this land as tenant and since their purchase of land, has not paid them their share of the produce and therefore Balbir Chand be ejected from the land. The applicants have also produced Inderjit Singh AW-2 according to whom the applicants had demanded their share from the Balbir Chand tenant respondent since 1999 but he has not paid any share of the produce to the applicants.

I have heard arguments of counsel for the applicants. He has argued that Balbir Chand respondent has not paid their share of the produce to the applicants ever since 8.1.99 without any sufficient cause and as such he is

liable to be ejected from the land detailed in application. The respondent has not contested the claim of the applicants. It is clear that the respondent has failed to discharge his liability of payment of rent. He is therefore ejected from the land detail in application.”

16. It was in the year 1975 that while passing a conditional order of ejectment, the plaintiff-tenant had been given protection in terms of section 9-A of the 1953 Act. However the plaint is conspicuously silent as regards the status of any proceedings pertaining to resettlement of the plaintiff pursuant to order dated 21.11.1975. There is absolutely nothing on record to show as to what steps had been taken by the plaintiff and as to whether he had ever made any application to the authorities concerned for allotment of any land. The present application for ejectment of plaintiff on grounds of non-payment of rent had been filed by the defendants after 18 years of the order dated 21.11.1975. It would certainly be unfair to the 'small landlord' who, not having been put back in possession despite the conditional order of ejectment in his favour, is deprived even of the rent in respect of the premises in question. Viewed from another angle, it turns out that the landlord neither gets back the land nor gets the rent and is thus put in a more detrimental position on account of having sought ejectment of tenant.
17. The defendants cannot be penalised for omission on part of the State Government to provide some land for re-settlement of the plaintiff-tenant or inaction on part of the plaintiff-tenant to pursue the said cause. The protection extended in terms of Section 9-A of the 1953 Act cannot be interpreted to mean that the tenant is permitted to commit default in payment of rent and yet claim immunity from being evicted under all circumstances. This

certainly cannot be the spirit of the 1953 Act. The object was to introduce agrarian reforms in the country, while protecting rights of small landowners in the State. Though protection was also extended to tenants, but the small land owners can not be made to suffer under the garb of section 9-A of the 1953 Act. In other words, the fact that protection had been extended to a tenant in terms of section 9-A of the 1953 Act cannot be construed to mean that the tenant gets right to remain in possession of the property even without payment of rent on the ground that the State Government has not accommodated him on any alternate piece of land.

18. Our High Court in somewhat similar circumstances in AIR 1990 Pb. & Hr. 336 Mohinder Singh vs. The Financial Commissioner, where despite an order of ejectment having been passed, the possession had not been handed over to the landlord and the tenant was erratic in paying the rent, it was held that the right of the tenant to remain in possession in terms of section 9-A of the Act was not an indefeasible right. In other words the landlord, in case of any violation like non-payment of rent would certainly be well within his rights to proceed in accordance with law for ejectment of his tenant especially when such ground had accrued subsequently. The relevant extracts from the cited judgement read as follows:

6.The mandate of the legislature as expressed in Ss. 9 and 9-A of the Punjab Security of Land Tenures Act, 1953, is clear that while introducing agrarian reforms in the country, rights of small landowners in the State have to be protected and the centuries old relationship of landlord and tenant, coupled with the right of the landlord to eject his tenant who is not paying the rent regularly, has to be recognised. That is why it has been provided that a tenant of a small landowner will be allowed to retain possession of the land of his tenancy only up to the time he is not allotted some alternative land, and not for

all times to come. In the present case, the tenant-respondent No. 6, in the first instance, did not take any steps whatsoever for having an alternative land allotted and it has been found as a fact by the Revenue Authorities that he had been negligent in pursuing his case.

7. The mere fact that the tenant has been granted a limited protection by allowing him to retain possession of the land in dispute till some alternative land is allotted to him, does not confer upon him an indefeasible right to retain the land under his tenancy belonging to a small landowner till he actually gets possession of the alternative land allotted to him.

..... This right of the landlord to have the tenant ejected for non-payment of rent has been upheld recently by the various Courts and the consensus is not to put any premium on the efforts of the tenants in retaining the land by not paying the rent regularly. No sympathy can be shown to such a tenant who has been compelling the landlord to approach the Courts time and again for recovery of the rent.”

19. The facts of the present case are no different from the facts in the cited judgement inasmuch as despite an interregnum of 18 years the plaintiffs has not been accommodated on some alternate land either on account of inaction of the State Government or on account of lapse on part of the plaintiff himself in not pursuing his case and further the plaintiff has even defaulted in paying rent to the 'small land-owner'. In these circumstances, bearing in mind the ratio of the cited judgement, it is held that the tenant having been protected once in terms of section 9-A of the 1953 Act does not get a perpetual right to remain in possession of the property in question and in the event of any default on his part in payment of rent, the 'small land-owner' is well within his rights to seek his ejectment. Accordingly the question posed is answered in negative.
20. As regards appellant's contention that the ex-parte ejectment order dated 20.11.2003 had been obtained by exercising fraud, the said contention cannot

be accepted inasmuch as a perusal of order dated 20.11.2003 (Ex.D-2) reveals that after issuance of notice to Balbir Chand, son of the appellant, he had put in appearance to contest the application but subsequently absented and was proceeded against *ex-parte*. In fact, the appellant-plaintiff Gian Kaur during her cross examination has admitted that she had appeared in the said proceedings on behalf of her son. In these circumstances, it is evident that Gian Kaur and her son Balbir Chand were fully aware of the ejectment proceedings initiated in the year 2003 and thus cannot take up a plea that the proceedings have been conducted at their back without their knowledge.

21. As regards the contention of the appellant that the present ejectment proceedings had been initiated only against Balbir Chand and the name of Gian Kaur had intentionally not been included so as to obtain an *ex-parte* order in ejectment proceedings, the learned counsel for respondents has pointed out that proceedings for ejectment had been initiated only against Balbir Chand as it was Balbir Chand who was in possession and that even the revenue records reflected possession of Balbir Chand only and not of Gian Kaur. Thus, in view of the said position and also the fact that admittedly Gian Kaur had appeared in the ejectment proceedings on behalf of her son and had yet chosen not to take any step for being impleaded as a party and had in fact absented subsequently, it would not lie in the mouth of the plaintiff to allege any prejudice or fraud.
22. During the course of arguments it was also submitted on behalf of the appellant that the defendants, at the time of filing ejectment application, had concealed a material fact inasmuch as the particulars of the ejectment

application filed by Joga Singh in the year 1975 had not been disclosed. Having considered the aforesaid submission it is found that in fact the earlier ejectment application had been filed by Joga Singh, i.e. by the vendor of the defendants about 18 years back in the year 1975. It is the case of the respondents-defendants that the said fact was not within their knowledge as the vendor Joga Singh had never disclosed the said fact to them. In any case the present ejectment application was filed on a fresh ground which had accrued to them later i.e. non-payment of rent and in these circumstances the earlier proceedings of the year 1975 would not have any bearing in the ejectment proceedings filed in the year 2003.

23. I further find that infact the appellant-plaintiff did have a remedy of statutory appeal so as to challenge the ejectment order dated 20.11.2003 but for reasons best known to the appellant, no step in this regard seems to have been taken.
24. No other point has been raised or urged before this Court. I do not find any infirmity in the concurrent findings returned by the Courts below and the same are hereby affirmed. Finding no merit in the appeal, the same is dismissed.

(Gurvinder Singh Gill)
Judge

6.7.2018
kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No