

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5297 of 2003 (O&M)  
Date of Order:21<sup>st</sup> February, 2019

Joga Singh

...Appellant

Versus

Sukhwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naresh Prabhakar, Advocate,  
for the appellant.

Mr. Rajesh Garg, Sr. Advocate, with  
Ms. Nimrata Shergill, Advocate,  
for the respondents.

**ANIL KSHETARPAL, J.**

Plaintiff no.1-appellant is in the regular second appeal against  
the judgments passed by both the courts below.

In the considered view of this court, the substantial question of  
law which arises for determinations is:-

*“Whether a person who denies relationship of landlord  
and tenant from the very beginning can file a civil suit  
challenging the correctness of orders passed by the  
court/tribunal of limited jurisdiction under Sections 7  
and 7-A of the Pepsu Tenancy and Agricultural Lands  
Act, 1955 (hereinafter referred to as the 'Act of 1955')?”*

Some facts are required to be noticed.

Plaintiffs have pleaded that the land in dispute was owned by  
Basant Singh, who agreed to sell his land including the land in dispute  
measuring 1 kanal and 7 marlas to Balwant Singh, predecessor of the

plaintiffs vide agreement to sell dated 27.10.1977 and delivered possession of the suit land including other land. Thereafter, Balwant Singh (since deceased) cultivated the suit land under the agreement to sell. There was some dispute regarding the suit land and litigation was pending in Court, hence, sale deed could not be executed in favour of Balwant Singh. Thereafter, Joginder Singh, father of defendant no.1 got executed a sale deed in favour of his son on 05.06.1988 alleging himself to be attorney of said Basant Singh, the owner.

Later on a Civil Suit No540 dated 05.06.1990 was filed by the plaintiff claiming possession on the ground that Basant Singh is in illegal and unauthorised possession of the suit land. The suit was dismissed as withdrawn on 23.11.1994. However, during the pendency of the suit, defendant no.1 filed a suit under the Act of 1955 seeking ejectment of Basant Singh (predecessor-in-interest of the plaintiffs) seeking his eviction by asserting that Basant Singh was a tenant on the said land.

Basant Singh contested the eviction proceedings on the ground that he is not a tenant under defendant no.1 and there is no relationship of landlord and tenant between the parties. However, eviction was ordered by the Assistant Collector Ist Grade on 27.10.1994 and order was affirmed in appeal vide order dated 28.04.1995.

Thereafter, the plaintiffs who are successor in interest of late Sh. Basant Singh filed the present suit. The suit was contested and it was pleaded that the Civil suit is not maintainable being barred under Section 47 of the Act of 1955.

Learned trial court as well as learned first appellate court have primarily dismissed the suit on the ground that the Civil Court has no

jurisdiction to examine the correctness and validity of the orders passed under the Act of 1955. Learned trial court has additionally also dismissed the suit on the ground that the correctness of the order of eviction has also been challenged in the High Court where the matter is pending. It may be noted that the learned counsel for the parties admit that the writ petition filed challenging the eviction orders has since been withdrawn.

In view of the aforesaid facts, the question which has been posed above is required to be answered.

The Act of 1955 deals with various eventualities. However, for the purpose of decision of the present case, relevant provisions are contained in Sections 7, 7A and 47 of the Act of 1955. In the present case, eviction order was passed in proceedings which were initiated under Sections 7 and 7A of the Act of 1955, which are extracted as under:-

***7. Termination of tenancy.-***

*(1) No tenancy other than a tenancy of the landowner who is member of the Armed Forces of the Union or a Non-Resident Indian shall be terminated except in accordance with the provisions of this Act or except on any the following grounds, namely :-*

*[(a) \* \* \* \* \*]*

*(b) that the tenant has failed to pay rent within a period of six months after it falls due:*

*Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he has failed to pay such arrears during that period;]*

*(c) that the tenant, not being a widow, [a minor, an unmarried women, a member of the Armed forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity] has after commencement of the President's Act, sublet without*

*the consent in writing of the landowner, the land comprising his tenancy or any thereof ;*

*(d) that the tenant has, without sufficient cause, failed to cultivate personally such land in the manner and to the extent customary in the locality in which such land is situated;*

*(e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him;*

*(f) that the tenant , on demand in writing by the landowner, has refused to execute a kabuliyat agreeing to pay rent in respect of his tenancy in accordance with the provisions of sections 9 and 10.*

*1[(2) \* \* \* \*]*

***7A-Additional grounds for termination of tenancy in certain cases.-***

*(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands(Second Amendment) Act 1956 may be terminated on the following grounds in addition to the grounds specified in section 7, namely :-*

*a. that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter-II;*

*b. that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :*

*Provided that no tenant other than a tenant of a landowner who is member of the Armed Forces of the Union or a Non-Resident Indian shall be ejected under this sub-section-*

*(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or*

*(ii) from an area of five stand acres, if the area under the personal cultivation of the tenant exceeds five standard acres,until he is allotted by the State Govt. Alternative land of equivalent value in standard acres.*

*(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under*

*the same landowner or his predecessor-in-title, shall be ejected on the grounds specified in sub-section (1)-*

*a. from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or*

*b. from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres:*

*Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.*

### ***Explanation***

*In computing the period of twelve years, the period during which any land has been held under the same ; landowner or his predecessor in title by the father, brother or son of the tenant shall be included.*

*(3) For the purpose of computing under sub-section (1) and (2) the area of land under the personal cultivation of la tenant, ;any area of land owned by the tenant and under his personal cultivation shall be included.*

Section 47 of the Act of 1955 on which much reliance was placed by learned senior counsel for the respondents, is also extracted as under:-

### ***47. Bar of jurisdiction.-***

*(1) NO civil court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority.*

*(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed*

*authority made under or in pursuance of this Act shall be called in question in any court.”*

On careful perusal of Section 7 of the Act of 1955, it is apparent that Sections 7 and 7A provide for various grounds on which tenancy comes to an end and on termination of tenancy, the court of limited jurisdiction has a power to order eviction of such person. Under Sections 7 and 7A, it is not provided that the court of limited jurisdiction has a right to finally determine the question that whether there is an inter-se relationship of landlord and tenant or not and whether any tenancy existed or not. The jurisdiction to decide grounds for eviction and declaration that the tenancy stands terminated has been conferred on the court of Assistant Collector Ist Grade which is a court of limited jurisdiction. The Act envisages a summary proceedings.

On reading of Section 47 (extracted above), it is apparent that the jurisdiction of the Civil Court has been excluded only with respect to the issues which are required to be settled, decided or dealt with by the competent authority under the Act.

It is well settled that exclusion of the jurisdiction of the Civil Court should not be readily inferred with respect to civil dispute. A statute which purports to exclude ordinary jurisdiction of the Civil Court, it shall do so either by expressed terms or by the use of such terms as would necessarily lead to the inference of such exclusion.

While testing on the aforesaid parameters, this court is of the view that the relationship of landlord and tenant is to be finally adjudicated upon by the Civil Court. On reading of Section 7 of the Act of 1955, it is apparent that *sine-qua-non* for initiating proceedings is to the effect that

there was a relationship of landlord and tenant. A word of caution, this Court is not laying down that the courts of limited jurisdiction does not have power to proceed with the proceedings if relationship of landlord and tenant are denied. However, if the relationship is disputed, the party has a right to file a civil suit and establish before the Civil Court that the proceedings were without jurisdiction as there was no relationship of landlord and tenant. No doubt, the jurisdiction of the Civil Court under Section 47 of the Act of 1955 is barred with respect to conclusion of the court of limited jurisdiction for grounds of eviction and matters relating thereto which falls within the exclusive domain of Court/Tribunal constituted under the Act of 1955. However, on question whether there existed relationship of landlord and tenant, order passed by the court of limited jurisdiction cannot be held to be final.

In this regard certain precedents cited by learned counsel for the parties are required to be discussed.

Learned counsel for the appellant has relied upon a Division Bench judgment of this Court in the case of **Khazan Singh and another vs. Dalip Singh and another, 1969 PLJ 459**. In the aforesaid case, the Division Bench was examining the jurisdiction of the Civil Court *vis-a-vis* Section 77 of the Punjab Tenancy Act 1887 and the Division Bench held that once the relationship of landlord and tenant is disputed, the jurisdiction of the Civil Court is not barred. In that case, after the order of eviction was passed against the tenant. The tenant filed proceedings under Section 18 of the Punjab Security of Land Tenures Act, 1953 claiming right to purchase the property which was allowed and thereafter owners/landlords filed Civil Suit challenging the decision of the Court of limited jurisdiction on the

ground that there is no relationship of landlord and tenant after the order of eviction had been passed and become final. In that context, the Division Bench answered the question by declaring that Civil Court has a jurisdiction in case relationship of landlord and tenant is disputed.

Learned senior counsel appearing for the respondents-defendants has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Mohan Lal vs. Kartar Singh and others, 11995 Supp (4) SCC 684.** Learned senior counsel submitted that this judgment deals with Section 47 of the Act of 1955 and therefore, it implidly over rules the judgments passed by the Division Bench, which of course is not under the Act of 1955.

This court has carefully read the judgment passed by the Hon'ble Supreme Court in the case of Mohan Lal (supra). In the aforesaid case, the question which was examined by the court was whether surrendering of tenancy was voluntarily or not? The Hon'ble Supreme Court held that such question falls in the exclusive jurisdiction of the Collector under the Act and, therefore, the bar as contained in Section 47(2) of the Act of 1955 would apply. In the aforesaid judgment, the Supreme Court was not dealing with a question as to “Whether there was/is a relationship of landlord and tenant between the parties. In other words, existence of tenancy was not the question arising in the aforesaid case.

In this regard, one can usefully referred to a judgment passed by the Hon'ble Supreme Court in the case of **Magiti Sasamal v. Pandab Bisoi, AIR 1962 SC 547.**

In the aforesaid case, the Hon'ble Supreme Court was dealing with a situation when under an Orissa Tenants Protection Act, 1948, the

jurisdiction of the Civil Court was barred. The Hon'ble Supreme Court went on to hold that the Civil Court has the jurisdiction once existence of the tenancy itself is disputed.

Still further, reference can also be made to another judgment passed by the Hon'ble Supreme Court following the judgment passed in the case of *Magiti Sasamal v. Pandab Bissoi, AIR 1962 SC 547*. Refernece in this regard can be made to *Shri Raja Durga Singh of Solan v. Tholu, AIR 1963 SC 361*.

Still further, in the present case, plaintiffs had also prayed for a decree for permanent injunction on the ground that they are in continuous possession of the property pursuant to the agreement to sell and delivery of possession. Thus, the plaintiffs had sought to protect their possession in part performance of the contract (agreement to sell) under Section 53 A of the Transfer of Property Act, 1882.

Both the courts have not examined the case of the plaintiffs as set up in the plaint.

In view thereof, the substantial question of law framed above is answered in favour of the plaintiff-appellant. The judgments passed by the courts below are set aside. The case is remitted back to the learned trial court to proceed with the trial of the suit in accordance with law.

The regular second appeal is allowed.

Parties through their counsels are directed to appear before the learned trial court at Kapurthala, on 11.03.2019.

21<sup>st</sup> February, 2019  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No