

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3586-1986
Reserved on: 13.03.2024
Pronounced on: 01.04.2024
2024:PHHC:043183

STATE OF PUNJAB AND OTHERS

.... APPELLANTS

Vs.

KESHAV CHANDER THOUGH HIS LEGAL REPRESENTATIVES

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sahil R. Bakshi, Advocate, for the appellants.

Mr. Parvinder Singh, Advocate, for the respondent.

DEEPAK GUPTA, J.

By way of this Regular Second Appeal, the unsuccessful defendants (*appellants herein*) have approached this Court challenging the concurrent finding of the Courts below, whereby *Civil Suit No.110 of 1984 titled as 'Kesar Chander Vs. Punjab State and others'* filed by the plaintiff (*respondent herein*) for declaration was decreed; and the first appeal filed by the appellants was dismissed.

2. In order to avoid confusion, parties shall be referred as per their status before ld. lower Court. During appeal, LRs of plaintiff – respondent were brought on record.

3. According to the plaintiff, he had purchased the suit land from previous owners Krishan Kumar and Jagdish Chander for consideration of ₹5300/- vide registered sale deed dated 02.12.1943 (Ex.P1); that defendants had no concern with the said land but were threatening to dispossess him (plaintiff) forcibly. Plaintiff prayed for decree of declaration that he is the owner in possession of the suit land with further prayer for decree of perma-

ment injunction to restrain the defendants from dispossessing him from the suit land in any manner.

4. The stand of the defendants was that though Krishan Kumar and Jagdish Chander were earlier owner of the suit land, from whom plaintiff purchased the same in 1943, but it is Noor Mohammad etc., who were recorded as occupancy tenants in the suit land and who continued to possess the same till 1946-47 i.e. till partition of the country and thus, plaintiff was not in possession of the suit land. It was further pleaded that it is only after the migration of the Muslim occupants/tenants that the plaintiff occupied the land as tenant at will. Defendants pleaded further that custodian of the evacuee property stepped into the shoes of the Muslim Occupancy Tenants after their migration to Pakistan in 1947 and thereafter, custodian had become owner of the suit land and plaintiff was left with no right, title or interest therein. With this stand, defendants prayed for dismissal of the suit.

5. Necessary issues were framed. The material issue before the Court to decide was as to whether the plaintiff is the owner in possession of the suit land or not? Apart from the oral evidence, plaintiff relied upon sale deed Ex.P1 besides revenue record (Jamabandies) Ex. P5 to P9. Defendants did not adduce any evidence to support their stand. After hearing both the sides, ld. trial Court vide its judgment dated 13.06.1984 held the plaintiff to be owner in possession of the suit land and thus, decreed the suit. Defendants filed First Appeal. The said Regular Civil Appeal No.188 of 1985 was dismissed by the ld. Addl. District Judge, Jalandhar on 01.08.1986 by upholding the findings recorded by the trial Court.

6.1 Assailing the aforesaid findings, it is contended by ld. AAG, Punjab appearing on behalf of the appellants that the Courts below have erred

in appreciating the controversy; that after partition of the country, as the Muslim occupancy tenant migrated, the suit land automatically vested in the custodian by virtue of Section 4 of the East Punjab Evacuees (Administration of Property) Act, 1947 [for short the 1947 Act']; that there was no need to hold any inquiry under Section 7 of the Administration of Evacuee Property Act, 1950 [for short 'the 1950 Act'] before vesting of the occupancy rights held by the Muslims; that possession of the suit land was with the custodian, when the Muslim evacuees migrated to Pakistan and that these aspects have been ignored by the Courts below.

6.2 Ld. AAG, Punjab for the appellants relied upon *Sham Singh Vs. The Custodian in General, New Delhi, 1961 PLR 420* and *M/s Hazi Esmail Noor Mohammad & Co. & Others Vs. The Competent Officer, Lucknow, AIR 1967 SC 1244*.

7.1 Refuting the aforesaid contentions, ld. counsel for the respondent-plaintiff contends that there is neither any pleading nor any evidence on the part of defendants-appellants regarding automatic vesting of the ownership rights by virtue of 1947 Act in the custodian; that there is no evidence on the part of the State that the alleged evacuee left the territory outside India since 01.03.1947 and so, it cannot be presumed that it is evacuee property; that there is neither any pleading nor evidence to show that at any point of time, physical possession was ever taken by the defendants as per Section 6 of the 1947 Act nor there is any evidence to show that any inquiry was conducted in accordance with Section 7 of the Act. Ld. counsel has referred to *Darshan Lal Vs. R.S. Aggarwal, 1958 PLR 669* and *R.L. Aggarwal Vs. Darshan Lal, 1960 PLR 509*.

7.2 Ld. counsel also submits that since no notice under Section 7 of

the 1950 Act was ever issued, so jurisdiction of the Civil Court is also not barred under Section 46 of the 1950 Act. Ld. counsel has referred to ***Dr. Rajender Prakash Sharma Vs. Gyan Chandra and others***, AIR 1980 SC 1206 and ***Dr. Zafar Ali Shah and others Vs. The Assistant Custodian of Evacuee Property, Jhansi and others***, AIR 1967 SC 106 besides ***Seva Singh Vs. Union of India***, 2007(3) RCR (Civil) 748.

7.3 Ld. counsel contends that now plaintiff (presently through his LRs) is owner in possession of the suit property for the last more than 79 years and are being unnecessarily harassed by the appellate-State.

Prayer is made for dismissal of the appeal.

8. I have considered submissions of both the sides and appraised the record.

9. It is the admitted case of the parties that earlier Krishan Kumar and Jagdish Chander used to be owner of the suit land, who had sold the same to the plaintiff in 1943. At that time, suit land was in cultivating possession of Noor Mohammad etc., in the capacity of occupancy tenants. It is also the conceded case of the defendants-appellants that Noor Mohammad etc., continued to be in possession of the suit land only till 1946-1947 and then on partition of the country, plaintiff occupied the land as tenant at Will. Since plaintiff had already acquired the ownership rights in the suit land in 1943, therefore, as soon as he came in possession of the same on migration of the Noor Mohammad etc., the erstwhile occupancy tenants, the said tenancy rights merged into ownership rights. In other words, plaintiff then became owner in possession of the suit land.

9. Looking the case from another aspect, defendants contend that by virtue of Section 4 of the East Punjab Evacuees (Administration of Evac-

uee Property) Act, 1947 [in short '1947 Act'], on migration of Noor Mohamad etc., the property came to be vested in the custodian. Learned State counsel has made reference to ***Kundan Lal and another Vs. Hari Ram and others, AIR 1981 Delhi 144***, wherein it was held that there is no question of issuing further notice or making a declaration that a property is evacuee property under Section 7 of the Administration of Evacuee Property Act, 1950, if the property had automatically vested in the custodian.

10. The question is as to whether the suit property had automatically vested in the custodian by virtue of Section 4 of the 1947 Act as is contended by the defendants. Sections 4 and 6 of East Punjab Evacuee (Administration of Property) Act, 1947 (*as they stood at the relevant time*) read as under:-

“4. Vesting of evacuee property in the Custodian.-All evacuee property situated within the province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

6. Custodian to take possession of evacuee property.-

(1) The Custodian shall take possession of all evacuee property vesting in him under this Act.

(2) The custodian shall comply with the following provisions in taking possession of any immovable property under Sub-section (1), namely :

(a) The custodian shall publish in the locality a notice specifying the property of which he intends to take possession.

(b) Where the property is occupied by any person.

(i) The custodian shall give his notice in writing requiring such person to vacate the property;

(ii) And if that person claims to be entitled to continue in possession of the property, the Custodian shall hold a summary inquiry and determine the claim;

(iii) The Custodian may allow such person to continue in possession on such terms and conditions as he thinks proper if such person is held to be so entitled;

(iv) If such person refuses or fails to vacate the property the Custodian may evict such person and use all force necessary

thereto, and may after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession.

(c) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses.”

11. Though as per Section 4 of the 1947 Act, the evacuee property situated in province of East Punjab is to vest in the custodian for the purpose of the Act but custodian is required to take possession of the same by following procedure laid down in Section 6 of the 1947 Act.

12. In the present case, it is not case of defendants- appellants that they ever took possession of the property in dispute by following the procedure laid down in Section 6 of the Act. Since it is the admitted case of the defendants that on migration of Noor Mohammad etc., plaintiff had come in occupation of the property in dispute, therefore, it was necessary for the custodian to follow the procedure laid in Section 6 of the Act to assume possession of the suit property, which was never done. As possession was never taken from the plaintiffs by following the procedure as laid down in Section 6 of the 1947 Act, therefore, said possession cannot be held to have become unauthorised.

13. Further, it is not the case of the defendants- appellants that on migration of erstwhile occupancy tenants Noor Mohammad etc. to Pakistan in 1946-1947, the occupancy rights vesting in them had ripened into the ownership rights, as per Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

14. Still further, the East Punjab Evacuees (Administration of Property) Act, 1947 was repealed by virtue of Section 58 of the Administration of Evacuee Property Act, 1950 [Central Act of 1950].

15. Section 7 and 7A of the Central Act of 1950 provides as under:-

7. Notification of evacuee property. -

(1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

(2) Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

7-A. Property not to be declared evacuee property on or after 7th May, 1954.

Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954.

16. The distinction between the 1947 Act and Central Act of 1950 was discussed by Punjab High Court in *Sham Singh and another Vs. Custodian General, New Delhi and others, 1961 PLR 420*, and it was held as under:-

“15. The procedure laid down in Section 7 and Section 8(1) of the Central Act of 1950 was not provided by the East Punjab Act of 1947. The essential distinction between the two provisions is that according to the East Punjab Act, all property within the province automatically vested in the Custodian

without there being any previous claim, enquiry or declaration that the property was evacuee property. Enquiry into claims to the property, the possession or the control of which has been assumed by the Custodian, was to be instituted after an application had been made to that effect by the claimant under Section 7 of the Act. In other words, the property became automatically vested in the Custodian and any enquiry as to the claims or as to the character of the property followed the vestment. The procedure under the Central Act of 1950 was materially different in so far that Section 7 of the Central Act required the Custodian after causing a notice to be given and in his opinion any property was evacuee property, to hold an enquiry into the matter and then pass an order declaring any such property to be evacuee property. Under Section 8 (1), a property which had been declared to be evacuee property under Section 7, was deemed to have vested in the Custodian for the State. In this case, in view of the provisions of the sub-section (2) of Section 8 of the Central Act, a reference to the earlier East Punjab Act of 1947 is necessary for determining the character of the property. Under Section 4 of the East Punjab Act a property had already vested in the Custodian regardless of the fact whether any declaration with respect to its evacuee character had been made or not, or whether the Custodian by a general or special order had assumed possession of or control over the property or not as contemplated by Section 6 of the East Punjab Act. Holding of an enquiry into claims to evacuee property or the assumption of possession of or control over the property was not a condition precedent to the vesting of the evacuee property in the Custodian under Section 4. The position under the Central Act of 1950 had been, to a certain extent, reversed, as section 7 required the Custodian to hold on an enquiry after causing notice thereof to the persons interested and then pass an order declaring any such property to be evacuee property. Under Section 8(1) such property as had been declared to be evacuee property under the preceding sections shall be deemed to have vested in the Custodian for the State. Declaration as to the evacuee character of the property under the Central Act is, therefore, a condition precedent to its vesting in the Custodian for the State.”

17. In the present case, the appellants- defendants by relying upon the above-said authority contend the automatic vesting of the ownership rights

of the property in dispute in the custodian. However, there is no merit in this contention, having regard to the fact that plaintiff had become owner of the suit property in 1943 and then he already come into possession of the suit property immediately on migration of Noor Mohammad etc. to Pakistan as is admitted case of the defendants and thus, the tenancy rights of Noor Mohd etc. had merged in the ownership rights of plaintiff. In such circumstances, it was required for the defendants to follow the procedure under Section 6 of the 1947 Act. If still the defendants perceived the suit property to be an evacuee property, then it was necessary to declare the same as such, as per Section 7 of the Central Act of 1950 by following the procedure laid down therein and which could have been done on or before 07th May, 1954 in view of Section 7A of the 1950 Act.

18. In **Dr. Rajendra Prakash Sharma Vs. Gyan Chandra and others, 1980 AIR (SC) 1206**, it has been held by Hon'ble Supreme Court of India that the conjoint reading of Sections 7 and 8 of the Central Act of 1950 would make it clear that making of a declaration after inquiry under Section 7 of the 1950 Act that property is evacuee property is a sine qua non for giving the custodian dominion over the property. If no proceeding is taken under Section 7, there can be no vesting of the property in the custodian. In **Dr. Zafar Ali Shah and others Vs. The Assistant Custodian of Evacuee Property, Jhansi and others, AIR 1967 (SC) 106**, it has been held by Hon'ble Supreme Court, that when no notice is issued to the owners under Section 7 of the Administration of Evacuee Property Act, 1950, order declaring the properties as evacuee properties is without jurisdiction as no property of any such person can be declared to be evacuee property unless that person has been given notice under Section 7 of the 1950 Act.

19. In this case, it is not the case of the defendants that they ever followed the procedure laid down under Section 6 of the 1947 Act; or Sections 7 and 8 of the Central Act of 1950.
20. It may also be clarified here that as per the legal position explained in **Dr. Rajendra Prakash Sharma's case (supra)**, when property is never declared as an evacuee property by the custodian, then Section 46 of the Administration of Evacuee Property Act, 1950 will not bar the jurisdiction of the Civil Court to adjudicate upon the question, as to whether the property is evacuee property or not.
21. As such, it is held that the Courts below did not lack the jurisdiction while adjudicating upon the issue in hand, as was contended by learned counsel for the appellants.
22. In view of the afore-said legal and factual position as has been discussed above, this Court does not find any infirmity in concurrent findings arrived at by the Courts below. There is no merits in the appeal. As such, the same is hereby dismissed.

01.04.2024
Vivek/Renu

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No