

Mangal Singh etc. v. Piara Lal etc. (Sodhi, J.)

contention is placed on sub-section (3)(ii) of section 4 of the Act which reads thus :—

“4(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the—

(i) * * * * *

(ii) rights of persons in cultivating possession of Shamilat Deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) * * * * *

I am afraid, there is no merit in this contention of the learned counsel. From the plain reading of the relevant provision of the statute reproduced above, there is no manner of doubt that the period of 12 years is to be computed up to the date of the enforcement of the Act and not up to the date when an application is filed under sub-section (2) of section 7 of the Act.

(8) No other point is urged.

(9) For the reasons recorded above, this petition fails and is dismissed but in the circumstances of the case I make no order as to costs.

B.S.G.

REVISIONAL CIVIL

Before H. R. Sodhi, J.

MANGAL SINGH AND ANOTHER,—Petitioners

versus

PIARA LAL AND ANOTHER,—Respondents.

Civil Revision No. 781 of 1970.

September 29, 1970.

Code of Civil Procedure (V of 1908)—Section 115 Order 16, rule 19 and Order 26, rule 4—Party to a suit—Whether has statutory right to claim the

issue of a commission to examine his witnesses—Matter of issue of commission—Whether in the pure discretion of the trial Judge—Revision against the order refusing the issue of commission—Whether lies.

Held, that the word 'may' in Order 26, rule 4 of the Code of Civil Procedure 1908, cannot be equated with 'shall' thereby giving statutory right to a party in a suit to claim the issue of a commission for the examination of his witnesses. No doubt Order 16, rule 19 of the Code provides that certain class of persons including those residing beyond 200 miles cannot through a process of the Court be forced to appear as a witness but it does not necessarily follow that commission must issue for the examination of such a person. There are cases where process of the Court is abused and persons residing at distant places are sought to be examined on commission only to prolong the proceedings or for any other extraneous reasons. Issue of a commission is a matter of discretion of the Court which has of course to be exercised not capriciously or arbitrarily but judicially, according to the circumstances of each case. The whole object of the exercise of discretion is to ensure proper administration of justice and if the issue of a commission tends to achieve that end, the Court will not be justified in refusing the request of a party in this regard. (Para 1).

Held, that the remedy of a party, if a commission is not issued as desired by it, is not by revision under section 115 of the Code but the party can make it a ground of appeal if such an appeal becomes necessary against the final decree itself. The order refusing a commission is just an interlocutory one and cannot be said to be a case decided within the meaning of section 115 of the Code of Civil Procedure. (Para 1).

Petition under section 115 of the Civil Procedure Code for revision of the order of the Court of Shri Gopi Chand, Sub-Judge II Class, Amritsar, dated 29th July, 1970 dismissing the application for issuing the commission.

B. S. SHANT, ADVOCATE, for the petitioners.

A. L. BAHRI, ADVOCATE, for the respondents.

JUDGMENT

SODHI, J.—(1) These are three connected revision petitions arising out of suits for possession by pre-emption instituted by Piara Lal respondent. The petitioners are the vendees of the different parcels of land sold under different sale-deeds. After the evidence of the plaintiff-respondent had been recorded in the three suits, a date was fixed for the evidence of the defendants-petitioners. One Shri Lashkar Singh described as Manager of Chahal Tractor Company care of Randhawa

Transport, Amritsar, was summoned as a witness for the petitioners in all the three cases. Summonses were duly issued and it is not disputed that the report received from the process-serving agency was that the said Shri Lashkar Singh had left for Sombhli in the District of Meerut (U.P.). When the case came up for recording of evidence, an application was made by the defendants that a commission be issued for the examination of the said Shri Lashkar Singh. This application was rejected by the trial Court on 29th July, 1970 with an observation that it appeared to it that the defendants, who were in possession of the suit property, were trying to prolong the proceedings. The trial Judge was also not satisfied as to how the evidence of the said witness was relevant and material to the case. In their application for the issue of commission, it was not stated as to why it was necessary to examine this witness. The evidence had, of course, to be confined to the issues framed in the suit and the only thing now urged by Mr. Shant is that the evidence of the witness sought to be examined on commission was required for the purpose of showing that he had levelled the suit land after purchase by the defendants-petitioners. The suggestion is that the vendees had made improvements and this evidence would be one of the links in proving the issue. No such information seems to have been given to the trial Court and, be that as it may, I am still doubtful if the evidence of that witness was really necessary. Improvements could be proved by other evidence as well but I do not propose to express any opinion on the relevancy or necessity of examining Lashkar Singh. The argument of Mr. Shant, learned counsel, for the petitioners, is that the trial Court had earlier applied its mind and considered the evidence of Lashkar Singh, necessary since summonses were issued to him for appearance in Court and that subsequent refusal to issue a commission was an arbitrary exercise of discretion. I am afraid there is no substance in this contention. After the institution of the suit, it is open to the parties to obtain summonses for the persons whose attendance they consider necessary either for giving evidence or for producing documents. There is no judicial application of the mind at that stage. All that a party has to do is, to pay in Court the requisite amount, as is sufficient to defray the travelling and other expenses of the persons summoned. A Court has also power to summon a person as a witness to give evidence or to produce any document in his possession. No one can, of course, be compelled to attend in person unless he resides within the local limits of the Court's original jurisdiction or at a distance

not exceeding 200 miles from the Court house. Order 26 rule 4 of the Code of Civil Procedure enables a Court to issue a commission for the examination of a person who cannot be compelled to attend. This rule reads as under :—

- “(1) Any Court may in any suit issue a commission for the examination of—
- (a) any person resident beyond the local limits of its jurisdiction;
 - (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
 - (c) any person in the service of the Government who cannot in the opinion of the Court, attend without detriment to the public service.
- (2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.
- (3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.”

The word ‘may’ as used in this rule cannot be equated with ‘shall’ thereby giving statutory right to the party to claim the issue of a commission. No doubt Order 16 rule 19 provides that certain class of persons including those residing beyond 200 miles cannot through a process of the Court be forced to appear as a witness but it does not necessarily follow that commission must issue for the examination of such a person. There may be cases where process of the Court is abused and persons residing at distant places are sought to be examined on commission only to prolong the proceedings or for any other extraneous reasons. Issue of a commission, in my opinion is a matter of discretion of the Court which has of course to be exercised not capriciously or arbitrarily but judicially, according to the circumstances of each case. The whole object of the exercise of discretion is to ensure proper administration of justice and if the issue of a commission tends to achieve that end, the court will not be justified in refusing the request of a party in this regard. The remedy for a party, if a commission is not issued as desired by it, is

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not by revision under section 115 of the Code of Civil Procedure but the party can make it a ground of appeal if such an appeal becomes necessary against the final decree itself. The order refusing a commission is just an interlocutory one and cannot be said to be a case within the meaning of section 115 of the Code of Civil Procedure.

For the foregoing reasons, the revision petitions are dismissed but there is no order as to costs.

B.S.G.

CIVIL MISCELLANEOUS

Before R. S. Narula and C. G. Suri, JJ.

SIRI RAM,—Petitioner.

versus.

**THE DEPUTY EXCISE & TAXATION COMMISSIONER, PATIALA ETC.,—
Respondents.**

Civil Writ No. 170 of 1965.

September 29, 1970.

Punjab Excise Act (I of 1914)—Sections 36 and 65—Punjab Liquor License Rules (1956)—Rule 37(33) (ii)—License becoming liable to cancellation under section 36—Licensee allowed to retain the license on payment of additional fee—Fixation of the quantum of such additional fee—Whether dependant on the acceptance of the licensee—Rule 37(33) (ii)—Whether ultra vires section 65.

Held, that when the stage for cancelling a liquor license on any of the grounds set out in section 36 of the Punjab Excise Act 1914, arrives, the competent authority has two roads open to him, either to cancel the license or not to cancel the license in spite of liability for cancellation having been incurred and to adopt the course of allowing the licensee to retain the license on payment of additional fee. The licensee having rendered his license liable to cancellation is then not given any voice by any part of Punjab Liquor License Rules (1956) to have a say in the matter of choice of the competent authority about the alternative which he would adopt, nor about the fixing of the quantum of the additional fee in a case where he decides to adopt the course open to him under clause (ii) of rule 37(33) of the Rules. The acceptance mentioned in the clause relates to the fixing of