Chiranji Lal and others v. Hira Lal

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definition of 'tenant' in section 2(i) of the East Punjab Urban Rent Restriction Act reads—

> "'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord....."

This clearly means that a sub-tenant placed in occupation by a tenant with the written consent of the landlord is in the position of tenant for the purposes of the Act, and if a tender of arrears of rent by such a person to the landlord is a valid tender for the purpose of averting a decree for ejectment on the ground of non-payment of arrears of rent on the landlord's petition, I fail to see how the tenant who originally placed him in the possession of the premises can claim to eject him when such a tender has been made. The result is that I accept the revision petition of the tenants and dismiss the application of Hira Lal for ejectment and I dismiss the landlord's appeal, both with costs. Counsel's fee Rs. 50 in each case.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Harbans Singh, J.

KHUSHI RAM,—*Petitioner*

versus

SMT. BHAGO AND ANOTHER,—*Respondents*

S. C. A. No. 2 of 1962

1963

Nov., 26th

Code of Civil Procedure (Act V of 1908)—Order XLV rule 4—Two appeals involving common points of law

decided together by one judgment, parties and subject-matter of the suits being different—Whether can be consolidated for purposes of valuation of the property in suit.

Held, that where two suits of different parties involving different properties were tried separately and the first appeals arising wherefrom were also decided separately, the mere fact that the second appeals in the High Court were heard together and decided by one judgment because they were referred to a larger Bench to decide a common point of law, does not entitle the parties to consolidate the two suits to determine the valuation for the purposes of appeal to the Supreme Court.

Petition under section 109, C.P.C., read with Article 133 (1) of the Constitution of India against the judgment and decree of the Punjab High Court, passed in R.S.A. No. 1084 of 1959, on the 12th May, 1961 by the Hon'ble Mr. Justice Tek Chand and the Hon'ble Mr. Justice K. L. Gosain.

D. N. AGGARWAL, ADVOCATE, for the Petitioner.

AMAR CHAND HOSHIARPURI, ADVOCATE, for the Respondent.

JUDGMENT

FALSHAW, C.J.—These are two applications by different persons, Balwant Singh and Khushi Ram, under Article 133 of the Constitution for leave to appeal to the Supreme Court against the decision of Tek Chand and Gosain JJ. in R.S.A. No. 736 and R.S.A. No. 1084 of 1959 by which on the 12th of May, 1961 they accepted the appeals of Shmt. Sukho in Balwant Singh's case and Shmt. Bhago in Khushi Ram's case and restored the orders of the trial Courts. Falshaw, C.J.

Leave to appeal is claimed as of right on the allegation that the land in each of the suits was worth more than Rs. 20,000 and still is so, and that in any case the suits should be treated as consolidated and the value of the subject-matter of the two suits certainly exceeds Rs. 20,000.

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The allegations regarding the value of the lands in suit were not conceded in either case by the opposite party, and thus the first step taken was to obtain reports from the trial Court regarding the value of the lands. These reports are to the effect that the land in Balwant Singh's case is valued at Rs. 18,000 and that in Khushi Ram's case at Rs. 6,100. These valuations have been challenged on behalf of the opposite party, but not on behalf of the petitioners. There does not appear to be any force in the objection of the opposite party, and the matter must be decided on the assumption that in neither case the property in suit is individually worth Rs. 20,000 or more, but that the total value is more than Rs. 20,000. The question therefore arises whether the two suits should be treated as consolidated. If they are to be so, leave would be granted as of right since the decision of this Court reversed that of the Court of First Appeal.

In order to decide the point it is necessary to state the facts regarding the litigation. The parties in both suits belong to the Dehra tehsil of Kangra district, but not to the same caste or village, the parties in Balwant Singh's case being Rajputs of a village called Tipri, while the parties in the other suit are Brahmins of a village called Bathra. The first suit to be instituted in point of time was Khushi Ram's which was instituted in the Court of a Subordinate Judge at Kangra in January, 1957. In that case the property had belonged to Relu, the father of Khushi Ram and two other sons, Shibu and Beli, the latter of whom died several years before his father leaving a widow Shmt. Bhago. After his death Shmt. Bhago cohabited with Shibu by whom she gave birth to two children in 1950 and 1952. Relu died in October, 1953 leaving a will on the basis of which his property was divided in equal shares between Khushi Ram, Shibu and Shmt. Bhago in the mutations effected by the revenue authorities. In these circumstances Khushi Ram was the

plaintiff in a suit instituted against Shmt. Bhago and his surviving brother, claiming that he was entitled to one-half of his father's estate because Shmt. Bhago had forfeited her right to inherit by her unchastity. Khushi Ram's suit was dismissed by the trial Court, but decreed by the Senior Subordinate Judge, Dharamsala, in first appeal.

In the other suit which was instituted in October, 1957 the facts were somewhat similar. Surjan Singh had three sons Pohlu, Gian Singh and Bhag Singh. The latter predeceased his father by several years, leaving as his widow Shmt. Sukho, who continued to live in her father-in-law's house and as a result of co-habitation with Gian Singh gave birth to three children. Pohlu also predeceased his father, the present petitioner Balwant Singh being his son. After the death of Surjan Singh in October, 1953 mutations were at first sanctioned by the revenue authorities by which one-third of Surjan Singh's land went each to Shmt. Sukho, Balwant Singh and Gian Singh. The mutation in favour of Shmt. Sukho was successfully challenged by Balwant Singh and so in this suit, which was tried by a different Subordinate Judge sitting at Dharamsala, Mst. Sukho was the plaintiff, claiming a declaration that she was entitled to succeed to one-third of the land of Surjan Singh and the defence was raised by Balwant Singh that Shmt. Sukho had lost her right to inherit by reason of her unchastity. The trial Court decreed Shmt. Sukho's suit, but again the decision was set aside in first appeal by the Senior Subordinate Judge, Dharamsala.

The appeal of Shmt. Sukho first came up in the ordinary way before a learned Single Judge, Gurdev Singh, J., who, because there appeared to be a conflict of authorities on the point involved, referred it to a larger Bench. It happened by a coincidence that the same learned counsel were representing the parties

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in both the cases, with the result that because of the similarity of the point involved the learned Judges of the Division Bench heard and decided both appeals together, the decision being in a single judgment in Balwant Singh's case with a consequential order in the other appeal. The question which arises on these facts is whether this is a proper case for applying the porvisions of Order XLV rule 4, Civil Procedure Code, which provides in connection with appeals to the Supreme Court that for the purposes of pecuniary valuation suits involving substantially the same questions for determination and decided by the same judgment may be consolidated, but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination.

The learned counsel for the petitioners relied on the decisions of the Madras High Court in *Sree Rajah Vasi Reddi Srichandra Mouleswara Prasada Bahadur Zamindar Garu* v. *Secretary of State and others* (1), and *Molugu Lakshminarasimhacharyulu and others* v. *Marisetti Ratnam and others* (2), in both of which it was held that the word 'judgment' in Order XLV rule 4, Civil Procedure Code, means the judgment appealed against, that is, the judgment of the High Court and thus the provisions of rule 4 apply to a case in which the suits were decided by the High Court by the same judgment though they were not decided by the same judgment in the lower Court. There is, however, a clear distinction between those cases and the present ones in that it would appear that in the cases decided by the Madras High Court against whose decisions leave was being sought for appeal to the Privy Council, the parties in both the cases were the same as well as the points involved. In fact there

(1) A.I.R. 1932 Mad. 125.
(2) 1949 Mad 739 (F.B.).

appears to have been no reason in either of those cases why the suits should not have been consolidated and tried together at an earlier stage. On the other hand in the present cases the parties are different, belonging to different castes and different villages, and although to some extent the main point of law involved is common to both cases there are differences, for instance that in Khushi Ram's case the father had left one-third of his estate to the widow of his predeceased son by a will. The two suits were tried by different Courts in the first instance and although the Court of Appeal was the same in both cases, the appeals were decided on different dates.

Neither party has been able to cite any case in which the parties were completely different and it would seem to have been by a sheer coincidence, due to the fact that the counsel involved were the same, that the other case was heard by the same learned judges along with the case which had been referred to a larger Bench. In the circumstances I am of the opinion that simply because the two cases were heard together and that only one main judgment was written deciding both the appeals they ought not be consolidated under Order XLV rule 4 Civil Procedure Code.

Such being the case it is necessary to decide the leave applications on the basis that the property in either case is not worth Rs. 20,000, and in order to grant leave we must certify that the cases are fit for appeal. In my opinion this must be held to be so, since the difficulty of the point involved receives *prima facie* support from the fact that a learned Single Judge thought it necessary to refer the appeal which came before him to a larger Bench, and although the authorities seem to point to the conclusion that by unchastity a widow does lose her right to retain her husband's estate or even to succeed in future the

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position in the present cases seems to be somewhat complicated by the finding of the learned Judges that in accordance with the custom of the parties in these cases it seemed probable that the widows had entered into some kind of so-called *Karewa* marriage with the brothers of their husbands. Thus the question which might arise is whether, if any kind of marriage is found to have taken place, they can still be regarded as widows. I would accordingly accept these applications and grant a certificate of fitness in each case, but the cases are treated as separate and not consolidated. The parties will bear their own costs on the applications.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Harbans Singh, J.

M/s. DALJEET AND CO. PRIVATE LIMITED,—*Appellant*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 229 of 1961.

1963

Nov., 28th.

Industrial Disputes Act (XIV of 1947)—Section 10—Dispute between management and workmen referred to Labour Court—Labour Court holding dismissal of some workmen wrongful and ordering their reinstatement with continuity of service and payment of two-thirds of the wages from the date of dismissal to the date of publication of the award—Some workmen held not entitled to reinstatement but full wages awarded to them for the said period—Whether proper.

Held, that the normal order, when a dismissal is set aside and the dismissed employee is reinstated with continuity of service, is for the payment of full wages from the date of the dismissal held to be wrongful to the date of reinstatement. This is so whether the dismissed employee is a Government servant or employed in a private industry. If an employer in an enquiry of this kind wishes the normal