

Before Jitendra Chauhan, J.

STATE OF HARYANA,—Appellant

versus

HARI OM AND OTHERS,—Respondents

R.S.A. No. 2074 of 1985

31st March, 2011

Punjab Tenancy Act, 1887—Ss. 5(2) and 77(3)(d)—Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952—Plaintiff claiming right of occupancy—Provisions of S. 77(3)(d) of 1887 Act provides that in case tenant wants to establish claim of right of occupancy, it has to file appropriate proceedings before Revenue Court and jurisdiction of Civil Courts would be barred—Suit of plaintiff was also held to be premature inasmuch as he failed to exhaust statutory remedies provided under Haryana Ceiling on Land Holdings Act, 1972—Since order declaring suit land as surplus itself was set aside, there was no occasion in decreeing suit of plaintiff since cause of action itself stood extinguished—Appeal allowed, judgments and decrees of both Courts below set aside.

Held, that a perusal of Section 77(3)(d) of the Punjab Tenancy Act, 1887 undoubtedly brings out the clear prescription of law that in case the tenant wants to establish the claim of right of occupancy, it has to file appropriate proceedings before the Revenue Court and the jurisdiction of the Civil Courts in this regard would be barred. I also find merit in the contention that the suit of the respondent—plaintiff was premature inasmuch as he failed to exhaust the statutory remedies provided under the Haryana Ceiling on Land Holdings Act, 1972. In any case since the order declaring the suit land as surplus itself was set aside, as has been observed by the learned lower Appellate Court, there was no occasion in decreeing the suit of the respondent—plaintiff since the cause of action itself stood extinguished.

(Para 14 & 15)

Ajay Gulati, DAG, Haryana, *for the appellant.*

None for the respondent(s).

JITENDRA CHAUHAN, J.

(1) The present regular second appeal has been preferred by the State of Haryana against the judgment and decree dated 21st February, 1985 delivered by the Court of Addl. District Judge, Sirsa, whereby the judgment dated 20th January, 1983 passed by the Sub-Judge, IInd Class, Sirsa, was affirmed.

(2) The present case was admitted for regular hearing on 20th August, 1985.

(3) The facts giving rise to the present case are that the plaintiff filed a suit for declaration to the effect that in view of Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952, he became owner of the suit land and the entries in the revenue record showing the plaintiff to be Tenant are liable to be corrected. The plaintiff also sought declaration to the effect that the order dated 28th December, 1976 passed by the prescribed Authority, Sirsa is wrong, against law and facts and is liable to be set—aside in the ground that he and his predecessors had been cultivating the suit land since time immemorial on payment of fixed cash rent, as there was paucity of cultivators in the village and thus, the predecessors of the defendant No. 2 gave the suit land for cultivation to the predecessors of the plaintiff. At that time it was agreed by the predecessors of the defendant No. 2 that they may continue paying cash rent and make the land cultivable and in case they do not commit fault, they would not be dispossessed. That as per custom the plaintiff has acquired the right of occupancy tenant. However, the Prescribed Authority, Sirsa *vide* order dated 28th December, 1976, allotted the suit land in favour of defendant No. 3 to 9 when in fact the suit land was not surplus. An application under Section 80 (2) C.P.C. was also filed with the suit, the suit was registered and notice of the same was given to the defendants.

(4) None of the defendants appeared in the court despite service through Munadi/Publication and, therefore, all the defendants were ordered to be proceeded against *ex parte*. But subsequently, on the application of the State, the defendant No. 1, the *ex parte* order was set-aside. The contesting defendant (present Appellant i.e. State of Haryana) filed its written statement denying the allegations of the plaintiff and asserted that

the suit land was surplus. The other allegations of the plaintiff were also denied by the contesting defendant. Various preliminary objections were also raised. Replication was filed and on the pleadings of the parties, the following issues were framed,—*vide* order dated 12th May, 1982 :—

1. Whether the plaintiff has become owner of the suit land because of proprietary Rights as alleged ? OPP
2. Whether the plaintiff is entitled to be entered as owner in the revenue record ? OPP
3. Whether the order dated 28th December, 1976, of the allotment authority is liable to be set-aside as alleged ? OPP
4. Whether the suit is in collusion with defendant No. 2 to 11 ? If so, its effect ? OPD
5. Whether the suit is bad for want of prior notice under Section 80 CPC ? OPD
6. Whether the civil court has no jurisdiction to try the present suit as alleged ? OPD
7. Whether the plaintiff has no *locus-standi* to file the suit ? OPD
8. Whether the plaintiff has not come with clean hands? if so its effect ? OPD
9. Whether the defendants are entitled to special cost u/s 35-A CPC ? OPD
10. Relief.

(5) The plaintiff in support of his case examined one Ram Narain, Revenue Patwari, Halqa Dhuakar as PW-1, who has stated that prior to 1954, the possession over the suit land was with one Aad Ram father of the appellant, and since Kharif, 1955, the plaintiff is recorded as tenant on payment of cash rent and since then he is in possession of the suit land. Nanak Ram, PW-2, deposed that the plaintiff and his father are in cultivating possession for more than 40/50 years on payment of case/rent and because of custom the plaintiff has acquired the right of ownership. Hari Ram, the

plaintiff, appeared as PW-3 and supported his contentions contained in the plaint. The plaintiff also tendered in evidence, the copy of the Mutation Ex.P.1, Jamabandis Ex.P.2, P.3, P.4 and P.5, Khasra Girdawari Ex. P.6, P.7 and P8, Jamabandis Ex. P.9 and Ex. P.11 copy of order Ex. P.10 and Ex. P.2 and closes his case.

(6) On the other hand, the contesting defendant/State has examined Shri Niranjan Singh Kanungo Surplus Area, Sirsa as DW-1, who has deposed that prior to 1952-53, Aad Ram, son of Channa Ram was tenant over the suit land and the suit land was tenants permissible area. He has further stated that on 28th December, 1976, the tenant was in possession of the suit land.

(7) As per the office report, notice was issued to the respondent on 18th March, 2011. However, the same has been received back with the report that the respondent is not residing at the given address. In the circumstance, there is no option left with the Court but to proceed further with the case.

(8) I have heard the learned counsel appearing for the State of Haryana.

(9) The questions to be determined by this Court are as under :—

- (i) Whether the plaintiff—respondents were entitled to the status of occupancy of tenants in view of section 5(2) of Punjab Tenancy Act, 1887 ?
- (ii) Whether in view of the Section 77(3) (d) of the Punjab tenancy Act, 1887, jurisdiction of the Civil Court to grant the status of occupancy tenants to the respondent—plaintiff was barred ?
- (iii) Whether the respondent—plaintiffs could have directly approached this Hon'ble Court for redressal of its grievance in view of the fact that he had not exhausted statutory remedies by challenging the order of prescribed authority under the Haryana Ceiling of Land Holdings Act, 1972 ?

(10) Learned counsel contended that in view of Section 77(3)(d) of the Punjab Tenancy Act, 1887, jurisdiction of the Civil Court to grant the status of occupancy tenants to the Respondent—Plaintiff was clearly barred. The learned counsel for the appellant—State further contended that in view of Section 5 (2) of the Punjab Tenancy Act, 1887, the Respondent—Plaintiff was not even entitled to the status of occupancy tenants since his stand before the Trial Court was that they had been paying cash rent, equivalent to the land revenue, to the land owners. Since the protection of Section 5 (ii) is available only in case cash rent equivalent to land revenue has been paid, the Respondent—Plaintiff having failed to place on record any receipt,—*vide* which he could show that the cash rent paid by them i.e. his predecessors, was equivalent to the land revenue, the learned trial Court as well as Lower Appellate Court erred in holding that the Respondent—Plaintiff was entitled to the protection of Section 5(2) of the Punjab Tenancy Act, 1887.

(11) The learned counsel for the Appellant—State further contended that the civil suit filed by the respondent—plaintiff was pre-mature in as much as statutory remedies were available to him under the Haryana Ceiling on Land Holdings Act, 1972, whereby he could have challenged the order of the Prescribed Authority. However, he did not choose to avail the statutory remedies in the first instance and straightway moved to the Civil Court which was a pre-mature course of action.

(12) The learned counsel for the appellant further contended that the order declaring the suit land as surplus was itself set aside by the Commissioner, Hisar Division. This fact was noticed by the Ld. Lower Appellate Court in para 9 of its judgment. Placing reliance on this fact, the Ld. Counsel for the appellant contended that since the order declaring the suit land surplus itself was set aside, the subsequent order allotting the said land to private respondents also become non-est. However, despite noting this fact, the Ld. Lower Appellate Court still went on the hold that the Respondent—Plaintiff was entitled to the status of occupancy tenants. As such, the Ld. Counsel for the Appellant contends that the learned Lower Appellate Court fell in patent error by confirming the judgment of the Ld. Trial court, whereas in view of the setting aside the order declaring the suit land as surplus, the suit itself should have been dismissed as having been rendered infructuous.

(13) In order to appreciate the arguments advanced by the learned counsel for the appellant—State, it would be necessary to reproduce the language of Section 77(3)(d) of the Punjab Tenancy Act, 1887.

“Revenue Courts and suits cognizable by them.—

(3) Procedure where revenue matter is raised in a Civil Court :—The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute of matter with respect to which any such suit might be instituted.

(Provided that—

(1) Where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII rule 10, Civil Procedure Code (V of 1908), and return the plaint for presentation to the Collector ;

(2) on the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in Section 77(3), First Group, of the Punjab Tenancy, Act, 1887 (XVI of 1887), and in other cases may send the suit to an Assistant Collector of the first grade for decision.)

(d) suits by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right.”

(14) A perusal of the aforementioned Section undoubtedly brings out the clear prescription of law that in case the tenant wants to establish the claim of right of occupancy, it has to file appropriate proceedings before the Revenue Court and the jurisdiction of the Civil Court in this regard would be barred.

(15) I also find merit in the contention raised by the learned counsel for the Appellant that the suit of the respondent—plaintiff was premature in as much as he failed to exhaust the statutory remedies provided under the Haryana Ceiling on Land Holdings Act, 1972. In any case since the order declaring the suit land as surplus itself was set aside, as has been observed by the learned Lower Appellate Court, there was no occasion in decreeing the suit of the respondent—plaintiff since the cause of action itself stood extinguished.

(16) In view of the above, the present appeal stands allowed and the judgments as well as decree of both the courts below are set aside.

R.N.R.