

Chuhary Vs. Sirtu

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Court : Delhi

Decided On : Dec-28-1967

Reported in : 4(1968)DLT412

Judge : I.D. Dua,; T.V.R. Tatachari and; Jagjit Singh, JJ.

Acts : Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 - Sections 62

Appeal No. : Regular Second Appeal No. 340 of 1967

Appellant : Chuhary

Respondent : Sirtu

Advocate for Pet/Ap. : Hem Chand and; Kirti Ram, Adv.

Judgement :

I.D. Dua, J.

(1) This appeal has been placed before us pursuant to the order made by S. N. Shankar J on 10th October 1967 and we are called upon to answer the following question.-

'WHETHER a Civil suit filed by a tenant dispossessed without his consent from his tenancy or any part thereof is barred having regard to the provisions of

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1959 '

The reference was necessitated because of an apparent conflict between a Full Bench decision of the Punjab High Court in *Bhag Singh v. Jawhar Singh* which had overruled an earlier decision of that Court and a decision of the Judicial Commissioner, Himachal Pradesh, in *Musadi v Smt. Ganpatu*.

(2) The facts so far as necessary for understanding the controversy may now be stated. Bhutu, the husband of Smt. Balesru, was a non-occupancy tenant of the land in question. Defendant No 1 Shri Chubaru was the owner landlord of the said land. When Bhutu was ejected from his tenancy, he applied to the Assistant Collector First Grade, for the restoration of possession of the

(3) The defendants denied that Bhutu was the tenant of the land in suit or that he was ever put into possession of the said land. It was further denied that the defendants were in illegal possession thereof. In fact, they pleaded that Bhutu had voluntarily given up cultivation of the land in question and the defendants were, in the circumstances, in lawful possession thereof. Several preliminary objections were also taken, including the objection questioning the jurisdiction of the civil Courts to try the suit. Indeed it is this objection which falls for adjudication by us.

(4) The learned District Judge, in agreement with the Court of first instance, came to the conclusion that after the expiry of one year of dispossession, the present suit in a civil Court was competent and was not hit by the provisions of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (hereinafter called the Act). The learned District Judge, it may be pointed out, placed reliance for his decision on certain decisions of the Lahore High Court, especially the decision reported as *Buru v. Niadar* and two decisions of the Punjab High Court reported as *Parmanand v. Rakha* and *Ram Sarup v. Budh Ram*'.

(5) When the second appeal came up for hearing before the learned Judge, his attention was drawn to the recent decision by five Judges of the Punjab High Court in *Bhag Singh's* case, and as the learned Judge was inclined to agree with this decision, and as he was not impressed by the decision of the judicial Commissioner, the question as reproduced above was formulated for decision by

us.

(6) We do not consider it necessary to go into the correctness or otherwise of the recent decision of the Punjab High Court in Bhag Singh's case, because in our opinion, the scheme of the Punjab Tenancy Act, with which that Court was concerned, is different from that of the Act in so far as the present controversy goes. It may, however, be pointed out that out of the five Judges constituting the Full Bench of the Punjab High Court, two Judges were hesitant in agreeing with the view adopted by the other three Judges, but they did not record their express dissent from that view. We may now consider the scheme of the Act so far as, relevant, and, can reasonably be discovered from the statutory language, because, in our view, this statute is far from a piece of skillful draftsmanship. This Act was enacted, to provide for the abolition of Big Landed Estates, and, to reform the law relating to tenancies in the Himachal Pradesh. It consists of 10 Chapters and we are directly concerned with Chapter V headed as 'Lease, Relinquishment, Abandonment and Ejectment' and Chapter IX dealing with 'Jurisdiction and Procedure'. The sections to which reference has been made at the bar, and which deserves being read in extenso, may now be reproduced. Section 62, dealing with relief from wrongful dispossession, is in the following terms :- Chapter V.

'62. Relief for wrongful dispossession or ejectment.-If a tenant has been dispossessed without his consent from his tenancy or any part thereof otherwise than in execution of a decree or then in pursuance of any order under section 57 he may, within one year from the date of his dispossession or ejectment, made an application for recovery of possession or for compensation or for both. 64. Bar to Civil Suits. -No person whose application has been dismissed under section 62 may institute a suit in a civil court to contest his liability to ejectment, or to recover possession or occupancy rights, or to recover compensation. 65. Bar of relief by suit under section 9. Act I of 1877 -Possession of a tenancy or of any land comprised in a tenancy shall not be recoverable under section 9 of the Specific Relief Act, 1877 by a tenant dispossessed thereof.'

Chapter 110. Application and proceedings cognizable by Revenue officers.- (1) The following applications and proceedings shall be disposed of by Revenue

Officers as such, and no Court shall take cognizance of any dispute or matter with respect to which any such application or proceeding might to be made or had :-

First Group (d) Applications under section 62 for recovery of possession or for compensation or for both ; 111. Revenue Courts and Suits cognizable by them.- (1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub section (3) or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court. (3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any suit might be instituted :-

Second Group (e) Suits by a landlord to eject a tenant ;

Procedure 119. Procedure of Revenue Officers. -(1) The State Government may make rules consistent with this Act for regulating the procedure of Revenue Officers under this Act in cases in which a procedure is not prescribed by this Act.

122. Procedure of Revenue Courts. -(1) The State Government may make rules consistent with this Act for regulating the procedure of Revenue Courts in matters under this Act for which a procedure is not prescribed thereby, and may by any such rule, direct that any provisions of the Code of Civil Procedure.. 1908, shall apply, with or without modification, to all or any classes of cases before those Courts. (2) Until rules are made under sub-section (1) and subject to those rules when made and to the provision of this Act- (a) The Code of Civil Procedure, 1908, shall, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree ; and (b) The Financial Commissioner shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Act, exercise as regards the Courts under his control, all the powers of a High Court under the Code.

132. Power to refer party to Civil Court- (1) If, in any proceeding pending before a Revenue Court exercising original, appellate or revisions] jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, require by order in writing, any party to the proceeding to institute within such time as it may fix in this behalf a suit in the Civil Court for the purpose of obtaining a decision on the question, and, if he fails to comply with the requisition may decide the question as it thinks fit. (2) If the party

institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding per diem before it; in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be. 133 Power to refer to Judicial Commissioner's Court question as to jurisdiction.- (1) If the presiding officer of a Civil Court or Revenue Court in which a suit has been instituted doubts whether he is precluded from taking cognizance of the suit, he may refer the matter through the District Judge or Financial Commissioner or if he is a District Judge or Commissioner or Financial Commissioner directly to the Judicial Commissioner's Court.

(7) It is agreed at the bar that the State Government has made no rules under section 119 of the Act.

(8) On behalf of the appellants, reliance has principally been placed on the recent decision of the Punjab High Court in Bhag Singh's case, but as would be obvious from what is just going to be stated, that decision deals with a somewhat different statutory scheme. The Judges held in the reported decision that a tenant, who has been dispossessed, can bring a suit for possession under section 50 of the Punjab Tenancy Act within one year of the date of dispossession from the tenancy, and if he fails to do so, the civil Courts would have no jurisdiction to entertain his suit for possession under the general law in view of the provisions of sub-section (3) of section 77 of the said Act, with reference particularly to clause (g) of that sub-section. The relevant portion of section 77 of the Punjab Tenancy Act may now be read :-

'77.* * * (3) The following suits shall be instituted in and heard and determined by Revenue Courts and no other Court shall take cognizance of any such dispute or matter with respect to which any suit might be instituted : Provided that - (i) 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, 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, and return the plaint for presentation to Collector ; (ii) on the plaint being presented to the Collector, the Collector shall proceed to hear and

determine the suit where the value thereof exceeds Rs. 1,000.00 or the matter involved is of the nature mentioned in section 7/ (3), First Group of the Punjab Tenancy Act, 18117, and in toher cases may send the suit to an Assistant Collector of the 1st grade for decision. * * * Second Group. (g) suits by a tenant under section 50 for recoveiy of possession or occupancy, or for compensation, or for both.'

section 60 dealing with relief for wrongful dispossession or ejectment reads as under.-

'50,In either of the following cases, namely:- (a) If a tenant has been dispossessed without his consent of his tenancy or any part thereof toherwise than in execution of a decree or than in pursuance of an order under section 44 or section 45; (b) if a tenant who. nto having instituted a suit under section 45 has been ejected from his tenancy or any part thereof in pursuance of an order under that section denies his liability to be ejected, the tenant may, within one year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy, or for compensation, or for both.'

It appears that as a result of certain decisions of the Punjab Chief Court and the Lahore High Court, section 50-A was added to the Punjab Tenancy Act, accordance with which a person whose ejectment had been ordered by a Revenue Court under section 45 (6), or whose suit had been dismissed under section 50 of the said Act, could nto institute a suit in a Civil Court to contest his liability to ejectment or to recover possession or occupancy rights or to recover compensation. It is quite clear that the problem which the Punjab High Court was concerned with is materially different from the problem which arises in the case in hand. Section 62 of the Act does nto provide for a suit in any Court, but merely enables a tenant, who is forcibly dispossessed, to apply within one vear of his dispossession to recover possession or compensation, or both. Section 64 bars suit in a civil Court at, the instance of a person whose application under section 62 has been dismissed. It is obvious that the plaintiff before us does nto fall within the category of section 62 because no application under section 62 was dismissed either at bsr instance or at the instance of her husband Bhutu. The appellants'

learned counsel, however, places reliance on section 110(l)(d). This provision, in our view, does not seem to exclude the jurisdiction of the Civil Courts either expressly or by necessary intendment so far as the present controversy is concerned. It is undoubtedly true that according to this provision, an application under section 62 has to be disposed of by Revenue Officers as such, and as is clear from the language of section 62, such application has to be made within one year from the date of dispossession or ejectment. But the Civil Courts' jurisdiction is barred only from taking cognizance of, to repeat the exact words, 'any dispute or matter with respect to which any such application or proceeding might be made or had.' To put more simply, it seems to us that the jurisdiction of the ' Civil Courts would only be barred regarding disputes or matters with respect to which an application might be made or a proceeding might be had. The language appears to us to prescribe the possibility of making an application or initiating proceedings in presenti at the time when cognizance of the Civil Courts is invoked for the adjudication of any dispute on matter envisaged by section 62. Now it is indisputable that an application under section 62 could only be made within one year of Bhutu's dispossession. The present suit admittedly was instituted long after such period of one year. therefore, section 110(l)(d), on its plain . reading, would not oust the jurisdiction of the Civil Courts in so far as the present suit is concerned. It is diomatic that the exclusion of jurisdiction of Civil Courts is not to be readily inferred. It can be excluded only if either there is express language used to that end or such a conclusion flows by necessary intendment. The provisions excluding such jurisdiction have, on accepted principles, to be strictly construed. In the case in hand, the express language does not seem to us to exclude the civil Courts' jurisdiction as just explained. In regard to the argument of necessary intendment, it is noteworthy that section 62 merely provides for an application to a Revenue Officer and there is no procedure prescribed in regard to the nature of the enquiry to be held in its disposal. The right of a tenant to get back possession is an important right to property and it is not easy to impute to the law maker an intention to deprive a tenant of a right to approach the civil Court for adjudication of such an important right, when all that is provided to him is an application to a Revenue Officer. Had the remedy provided to the tenant been that of a suit in a Revenue Court, similar to the scheme of the Punjab Tenancy Act, the argument in

support of exclusion of the Civil Courts' jurisdiction would perhaps have possessed some cogency, but in the absence of any such provision of a suit, we find it extremely difficult to uphold the objection to the Civil Courts' jurisdiction in taking cognizance of a case like the present. It appears to us that all that the provisions reproduced above deprive a tenant of is, his right to institute a civil suit during the period of one year when he has the right to approach the Revenue Officer for relief for wrongful dispossession or ejectment. The express bar of a suit under section 9, Specific Relief Act, as provided in section 65 of the Act, would also seem to lend some support to the view we are taking, because after excluding the summary remedy under the Specific Relief Act, the tenant has been provided with a summary remedy under section 62 available to him for a period of one year. Thereafter however, we find no cogent and rational reason, and certainly none has been placed before us, to deprive the aggrieved tenant of his right to approach the ordinary civil Courts for relief against dispossession or ejectment.

(9) On the view that we have taken, we consider it unnecessary to go deeply into the decision of the Punjab High Court in Bhag Singh's case and the other decisions of the Lahore High Court by eminent Judges, with which disagreement was expressed in that decision. We would however, like to refer to a decision of the Supreme Court in *Shri Raja Durga Singh v. Tholu* to which our attention has been drawn by the respondent's learned counsel. Mudholkar J., speaking for the Bench, while dealing with section 77(3) of the Punjab Tenancy Act, observed as follows:-

'THERE is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It would, therefore, be reasonable to infer that the legislature barred only those suits from the cognizance of a Civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of the land was a tenant. This is precisely what has been held in the two decisions of the Lahore High Court relied upon by Mr. A'Hbru Ram.'

Incidentally, it may be pointed out that of the two decisions which were approvingly referred to by Mudholkar, J. one was *Baru v. Niadar* with which the

Punjab High Court in Bhag Singh's case disagreed. We have referred to the Supreme Court decision because in the case in hand the defendant-landlord (appellants before us) had in the written statement unequivocally denied the status of the plaintiff as a tenant. The competency of such a suit in a Civil Court would seem to us to be supportable on the observations just reproduced.

(10) We are, therefore, of the view that the question referred cannot admit of a straight answer either in the affirmative or in the negative. A civil suit filed by a tenant dispossessed without his consent from his tenancy or a part thereof, would, in our opinion, not be barred if it is instituted after the expiry of one year as provided in section 62 of the Act. We do not consider it necessary to express any considered opinion about the competency of such a suit during the period of one year following dispossession or ejectment. That question may have to be answered on a more appropriate occasion when it directly arises for decision.

(11) We accordingly answer the question referred in the terms just stated.

(12) The case will now go back to a Single Bench for final disposal. The costs would be costs in the cause.

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