Before V. K. Bali, J

VIJAY SINGH,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER, HARYANA & OTHERS,—*Respondents*

C.W.P. NO. 1063 OF 1983

20th November, 2002

Constitution of India, 1950—Art.226—Punjab Tenancy Act, 1887-Ss.4, 14 & 77—Registered mortgage deed in favour of the petitioner—Petitioner giving mortgaged land on rent—Only an oral agreement between the parties—Respondents denying any mortgage deed executed in favour of petitioner & not paying the rent—Revenue Court decreeing the suit of the petitioner u/s 77 for recovery of rent—Respondents challening the mortgage deed in the Civil Court—Findings of the Civil Courts also in favour of the petitioner—Orders of the Collector, Commissioner & Financial Commissioner holding no relationship of landlord & tenant between the parties liable to be set aside.

Held, that definition of "landlord" in Clause 6 of Section 4 of the Act of 1887 is made subject to the context, by the opening words of Section 4. The term "landlord" in Section 14 is not used in relation to "tenant". Section 14 of the Act deals with liability of the person in possession of the land occupied by him. Section 77 of the Act provides that "the following suits shall be instituted in, and heard and determined by the revenue Courts which also includes suits in Clause (n), i.e. a suit by a landlord for sums recoverable under Section 14.

(Para 10 & 11)

Further held, that it stands proved to the hilt that the petitioner is a mortgagee whereas respondents 5 to 9 are the mortgagor—landlords. It is further proved that the mortgage was with possession. The version of the plaintiff that he had given this land on rent to the defendants and that is why they are in occupation of the land

despite the mortgage being with possession and the possession was parted with by the petitioner only on oral agreement between the parties that 1/3rd Batai shall be paid to him, has to be believed. I may say that this belief is for the simple reason that in case, this assertion of the plaintiff is not believed, then the landlord-mortgagors can be only in forcible possession. In either case i.e. if the petitioner might have rented out this land to respondents 5 to 9 or respondents 5 to 9 might have taken this land by force, they would be entitled to pay rent to the petitioner.

(Para 12)

Rajesh Chaudhary, Advocate, for the petitioner.

Jaswant Singh, Advocate, for the respondents.

JUDGEMENT

V.K. Bali, J. (ORAL)

(1) Whether a mortgagee in possession can successfully maintain a suit/application for recovery of rent from the landlord/ mortgagor is a question that needs determination in the present case.

(2) Brief facts of the case would reveal that the petitioner herein filed suit for rent under the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the Act of 1887') on 30th October, 1979 in the Court of Assistant Collector 1st Grade, Jind, the fourth respondent herein, on the ground that respondents 5 to 9, owners of the land measuring 188 kanals 8 marlas, had mortgaged the said land with possession with the pertitioner,—*vide* registered mortgage deed dated 4th June, 1971. On 3rd May, 1972, additional mortgage with possession was created for an additional sum of Rs. 30,000 under a registered mortgage deed. It was further the case of the petitioner that thereafter he leased out the land in dispute on 1/3rd Batai to respondents 3 to 9 from Kharif 1971, which was being cultivated by the respondents aforesaid but no Batai was paid to the petitioner. In the manner aforesaid, the petitioner claimed Rs. 15,500 on account of Batai from Rabi 1972 to Rabi 1974.

(3) Before I might proceed with the facts of the case, it would be relevant to reproduce (translated into English) paragraph 3 to the plaint. Same reads thus :—

> "That the plaintiff wanted to cultivate this land himself but the respondents requested that plaintiff should give this land to them on rent and that they shall keep on paying the rent to him. On the request made by the respondents, the plaintiff gave the land in dispute to the respondents on 1/3rd Batai from Kharif 1971 and since then the respondents are in continuous possession of the land under the plaintiff. In view of the good relations between the parties, there was no writing with regard to renting out the land in dispute."

(4) Written statement filed on behalf of respondents 1 to 3 is not available with the learned counsel representing the parties but it is clear from the order, Annexure P-1, passed by Assistant Collector 1st Grade in the suit filed by the petitioner for recovery of rent that the contesting respondents had taken a stand that they had never mortgaged the land in dispute with the petitioner and had never given possession to him, nor had taken the same on Batai. They were in possession right since beginning and that no additional mortgaged was executed in favour of the petitioner and if there be any such mortgage deed, the same was forged one and, therefore, the suit should be dismissed. On the pleadings of the parties, as mentione above, the Assistant Collector 1st Grade framed following 8 issues:—

> "1. Whether the plaintiff is mortgaged with possession of the suit land as alleged? OPP
>
> 2. Whether the defendants are tenant under the plaintiff of the suit land on 1/3rd Batai for the period alleged ? OPP
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> 3. If issue No. 2 is proved, what is the amount of Batai ?
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> 4. Whether this Court has jurisdiction to try this suit ? OPP
>
> 5. Whether the suit is not maintainable in present form for non joinder of necessary parties ? OPP

6. Whether the suit is liable to be stayed as the parties have already gone to the Civil Court ? OPD

7. Whether the plaintiff is estopped for filing the present suit as an appeal for correction of Girdwari by the plaintiff has been rejected by the Revenue Officer ? OPD

8. Relief."

(5) Returning findings in favour of the plaintiff on all crucial issues, reproduced above, suit of the petitioner was decreed for an amount of Rs. 13,594.10 ps. with costs. Aggrieved, some of the respondents, namely, Gopi, Hari Nandan and Munshi filed an appeal before learned Collector, which was allowed,—*vide* order dated 24th April, 1978 (Annexure P-2). Petitioner being aggrieved, now challenged the order aforesaid before learned Commissioner and the Financial Commissioner but with no favourable result, as appeal preferred before the Commissioner was dismissed on 3rd May, 1979 (Annexure P-3) and the revision filed by the petitioner before learned Financial Commissioner was dismissed on 9th August, 1982 (Annexure P-4). It is against these orders, i.e., Annexure P-2, P-3 and P-4 that the present writ petition has been filed.

(6) Mr. Rajesh Chaudhary, learned counsel representing the petitioner, vehemently contends that orders, Annexures P-2 to P-4 cannot possibly be sustained as the only ground, on which order passed by the Assistant Collector 1st Grade, decreeing the suit of the petitioner has been set aside, is that there was no relationship of landlord and tenant between the parties and, therefore, suit for recovery of rent under Section 77 of the Act of 1887 was incompetent. Before I might determine the question in light of the contention raised by the learned counsel, it would be appropriate to mention that in inter-partes suit, Civil Court returned a finding in favour of the plaintiff that the land was, indeed, mortgaged and the said mortgage was with possession. Civil litigation came about in civil suit filed by respondents Gopi, Hari Nandan and Munshi challenging the two mortgage deeds, referred to above, on the ground that the same was an act of fraud and, in fact and reality, they had never mortgaged their land and despite that Vijay Singh, petitioner herein, was about to take forcible possession of the land. This suit was dismissed by learned trial Court

and the appeal preferred by Gopi and others, as mentioned above, was dismissed by learned Additional District Judge, Jind on 20th July, 1978. Paragraph 12 of the judgment of learned Additional District Judge reads thus :—

> "To sum, I affirm the finding of the trial Court, that the plaintiffs had mortgaged this land to the defendant with possession and the mortgages were very much for consideration."

(7) In the course of the proceedings before the revenue Courts, the finding with regard to mortgage was in favour of the petitioner.

(8) Time is now ripe to determine the question as framed by this Court in the very beginning of this judgment. The term "landlord" has been defined in Clause 6 of Section 4 of the Act of 1887. The same reads thus:—

> "landlord" means a person under whom a tenant holds land and to whom the tenant is, or but for a special contract would be liable to pay rent for that land."

(9) Section 14 of the Act of 1887 deals with the payments for land occupied without consent of landlord. The same reads thus:—

> "Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use of occupation of that land at the rate of rent payable in the preceding agricultural year, or if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable."

(10) After hearing learned counsel representing the parties the Court is of the firm view that definition of "landlord" in Clause 6 of Section 4 of the Act of 1887 is made subject to the context, by the opening words of Section 4. The term "landlord" in Section 14 is not used in relation to "tenant".

(11) Section 14 of the Act of 1887 deals with liability of the person in possession of the land occupied by him. Section 77 of the Act of 1887 provides that "the following suits shall be instituted in, and heard and determined by the revenue Courts which also includes

suits in clause (n), i.e., a suit by a landlord for sums recoverable under Section 14.

(12) Insofar as, facts of the present case are concerned, it stands proved to the hilt that the petitioner is a mortgagee whereas respondents 5 to 9 are the mortgagor-landlords. It is further proved that the mortgage was with possession. In the facts and circumstances of this case, the version of the plaintiff that he had given this land on rent to the defendants and that is why they are in occupation of the land despite the mortgage being with possession and the possession was parted with by the petitioner only on oral agreement between the parties that 1/3rd Batai shall be paid to him, has to be believed. I may say that this belief is for the simple reason that in case, this assertion of the plaintiff is not believed, then the landlord-mortgagors can be only in forcible possession. In either case, i.e., if the petitioner might have rented out this land to respondents 5 to 9 or respondents 5 to 9 might have taken this land by force, they would be entitled to pay rent to the petitioner. This precise question came up for determination way back in 1891 in ***Bhola Nath*** versus ***Dana and others.*** **(1)** and was followed by other decision in ***Wazir Khan*** versus ***Rallia Ram.*** **(2)**

(13) Facts of Bhola Nath's case *(supra)* reveal that the plaintiff in the said case was a mortgagee of certain land under a mortgage of defendant No. 2 with possession. Defendants 1, 2 and 4 had taken forcible possession from him. The plaintiff, thus, sued and recovered Rs. 100 as damages for the harvest of Sawan, Sambat 1945. Subsequently, defendants 1 and 2 through defendant No. 3 and defendant No. 4 again forcibly cultivated the same land and then he claimed compensation to the tune of Rs. 200. These defendants, according to the allegations of the plaintiff, were in possession of the land without the consent of the plaintiff. In the matter aforesaid, a Division Bench consisting of Plowden and Roe, JJ. held as follows:—

> "These persons then were, according to the allegations of the plaintiff, "in possession of land occupied without the consent of the plaintiff," who is undoubtedly on his allegations "the landlord" within the meaning of Section

(1) Punjab Record, Volume XXVI 1891 (No. 19), 114
(2) Punjab Record, Volume XXVI 1891 (No. 68), 328

14 of the Punjab Tenancy Act. The definition of landlord in clause (6) of Section 4 is made subject to the context, by the opening words of Section 4. The term "landlord" in Section 14 is not used in relation to "tenant," the person there spoken of not being a tenant, but it clearly indicates the person who would be landlord if the land had been occupied with his consent, instead of being occupied without it.

Section 14 declares the liability of the person in possession of land thus occupied. Section 77 provides that "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 such suit might be instituted," and includes among such suits in clause (n) "suits by a landlord for sums recoverable under Section 14."

(14) Mr. Jaswant Jain, learned counsel representing respondents 5 to 9, is unable to controvert what has been urged on behalf of the petitioner but I must mention, in all fairness, that learned counsel relied upon a judgment of this Court in ***Gordhan Dass*** versus ***Sanjha Ram*** **(3)** to contend that suit under Section 77 (3) (n) of the Act of 1887 is not competent. The facts of the case aforesaid reveal that the plaintiff had alleged that the defendant was his tenant and had not given him the produce of the land from kharif 1962 to kharif 1963 and he claimed Rs. 679 as the price of the produce for that period. It was not denied that the defendant was evicted from the land on 22nd March, 1964. The suit of the plaintiff was instituted on 5th January, 1965 to recover the equivalent of kind rent not paid by the defendant during the currency of the tenancy. An objection was raised by the defendant that because of Section 77(3)(n) of the Punjab Tenancy Act, the suit was not cognizable by a Civil Court. Trial Court did not accept this and proceeded to decree the suit of the plaintiff having found the claim on merits established against the defendant. On appeal, learned District Judge held that the suit was covered by Section 77(3)(n) of the Act and hence barred from the cognizance of a Civil Court and the suit was, thus, dismissed. In the facts and circumstances, as mentioned above, it was held that when

(3) 1969 PLR 522

a suit under Section 77(3)(n) of the Punjab Tenancy Act is instituted by a landlord, the defendant need not be a tenant in the accepted sense that he should be in possession of the leased land. The suit has to be by a landlord. Inspite of the tenant having given up possession of the land and having ceased technically to be the tenant, there existing no relationship of landlord and tenant between him and the owner of the land, statute has made him liable for arrears and such arrears are recoverable under Section 77(3)(n) of the Act in a revenue Court. It was also held that the suit for arrears of rent by a landlord is not within the jurisdiction of a Civil Court. In considered view of this Court, the facts and circumstances of the case aforesaid have no parity with the case in hand. If the judgment is stretched a little bit, it turns in favour of the plaintiff and against the defendants.

(15) In view of the discussion made above, this writ petition is allowed. Orders, Annexures P-2 to P-4, are set aside and that of Assistant Collector 1st Grade, i.e., Annexure P-1, is restored. In view of the fluctuating fate of the parties, they are left to bear their own costs.

J.S.T.

Before G.S. Singhvi, J

LAL CHAND DALAL,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. NO. 9253 OF 1995

11th December, 2002

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol.I, Part I—Rl.3.26(d), Vol.II Rl.5.32—A(e)—Premature retirement of a Jail Superintendent one and a half years before his superannuation—Service record of the petitioner for ten years preceding his retirement almost good—No justification in recording adverse remarks by the Deputy Commissioner without any material for a short period about three months—State Govt. Committing a serious illegality in rejecting the representation for expunging the remarks—No cogent material before the Officer's Committee for forming an opinion that