

(1985) 10 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No 2325 of 1977

Kashmiri Lal Saluja
and others

APPELLANT

Vs

Financial
Commissioner, Punjab
(Taxation),
Chandigarh and
others

RESPONDENT

Date of Decision: Oct. 11, 1985

Acts Referred:

- Punjab Security of Land Tenures Act, 1953 - Section 19A, 19A, 19A(1), 19B
- Punjab Tenancy Act, 1887 - Section 100

Hon'ble Judges: I.S. Tiwana, J

Bench: Single Bench

Advocate: K.C. Puri and Mrs. Ish Singh, for the Appellant; Balraj Behal and Mr. Amrit Behal, for Respondent No. 5., for the Respondent

Judgement

I.S. Tiwana, J

1. In order to appreciate the controversy raised in this petition, the following facts which are otherwise not in dispute, deserve to be noticed.

2. The Petitioners are vendees from one Lakhu Ram, Respondent No 6. Karam Chand was a tenant under this Lakhu Ram right from the year 1952-53, on his land to the extent of 39 Kanals and 14 Marlas situated within the revenue estate of village Bhagwanpura, Tehsil Muktsar, District Ferozepur lakhu Ram later mortgaged this land to Krishan Kumar, a relation of his Karam Chand continued to be a tenant under the mortgagee also. Later Lakhu Ram redeemed this land through the Collector in accordance with the provisions of the Redemption of Mortgages (Punjab) Act, 1913 In execution of the order passed in favour of Lakhu Ram,

symbolical possession of the land was delivered to him on September 10, 1986 Still later on November 9, 1968. Lakhu Ram physically dispossessed Karam Chand and according to him, in the purported exercise of his right under the order of redemption passed in his favour. Karam Chand brought a suit for restoration of his possession in the Court of Sub Judge Second Class, Muktsar and succeeded in obtaining a decree to that effect on December 29, 1969. Still later when the matter came up before the District Judge. Ferozepure in appeal against the decree passed in favour of Karam Chand the Court found that as a matter of fact the suit should have been tried in a revenue Court and in the light of that it made a recommendation to this Court in terms of section 100 of the Punjab Tenancy Act, 1887 for the registration of the decree as a decree of the revenue Court. This recommendation of the District Judge was accepted by this Court on August 21, 1972 and that is how the decree passed by the Sub Judge Second Class, Mukitsar became a decree of the revenue Court.

3. On September 4, 1972, Karam Chand filed an application in the Court of the Assistant Collector 1st Grade, Muktsar to execute the decree passed against Lakhu Ram, his landlord. The latter raised two objections to the execution of the decree -

(i) Karam Chand, as a landowner and as a tenant was already possessed of more land than the permissible limit prescribed in Punjab Security of Land Tenures Act, 1953 (for short, the Act) and thus in view of the provisions of Section 19-A of the Act, respon-dent-Karam Chand is not entitled to acquire or possess the suit land.

(ii) the execution application had been filed (4th September, 1972) even earlier to the registration of the decree by the revenue Court on October 1, 1973 and thus the same was not maintainable.

The Assistant Collector vide his order dated November 22, 1971 (Annexure P. 2) repelled the first objection and without saying anything with regard to the other one, directed the issuance of warrants for possession of the land in favour of Karam Chand and against Petitioners. The primary reason stated by the Assistant Collector in his order for repelling the first objection of the Petitioner was that he as Assistant Collector Ist Grade had no jurisdiction to determine that Karam Chand was either a big landowner or a tenant having more than tenant's permissible area. However, Petitioner's appeal against this order of the Assistant Collector was accepted by the Collector on February 27, 1974, vide order Annexure P. 3 and Karam Chand's appeal against this order of the Collector was dismissed by the Commissioner vide order dated August 23, 1976 (Annexure P. 4). Karam Chand then preferred a revision petition before the Financial Commissioner which was allowed by the latter vide his order dated April 29, 1977 (Annexure P. 5) with the observation that the Assistant Collector was right in holding that he had no jurisdiction to determine the status of Karam Chand as a big landowner or a tenant having area more than the tenant's permissible limit. According to the Financial Commissioner it was solely within the jurisdiction of the Collector under the Act to determine and declare somebody's

area as surplus. It is this order of the Financial Commissioner which is now impugned before me by the Petitioners, i.e., the vendees from Lakhu Ram.

4. The first contention of Mr K. C. Puri, learned Counsel for the Petitioners is that since the acquisition of the suit land by Karam Chand Respondent through the decree in question is rendered void by Sub-section (2) (sic) Section 19-A of the Act, the Assistant Collector was certainly competent to hold it to be so and thus could not execute the decree. In a nut shell, the assertion is that the decree in question amounts to a transfer of the suit land to the Respondent tenant. While refuting both these submissions of the learned Counsel for the Petitioners, Mr Behl, learned Counsel for the Respondent tenant contends that Section 19-A of the Act is not at all attracted to the facts of this case firstly for the reason that the Assistant Collector Ist Grade had no jurisdiction to determine the states of Karam Chand as a big landowner or a person having more than tenant's permissible area, and according by executing this decree the tenant is not acquiring or seeking possession of any land through any of the modes, i.e., transfer, exchange, lease, agreement or settlement specified in this section According to the learned Counsel by virtue of the decree in question Karam Chand is being restored into possession of the land from which he and illegally and unauthorisedly been dispossessed by his landlord and the latter cannot be allowed to take advantage of his wrong in thwarting(sic) the execution of the decree. Having given my thoughtful consideration to the entire matter in the light of the submissions of the learned Counsel for the parties I find that Mr. Behl's stand is not without merit.

5. To sustain the first contention as noticed above, what is urged by the learned Counsel is that Section 19A of the Act prohibits any land owner or a tenant from acquiring any land in excess of his permissible area and in view of that Karam Chand cannot successfully execute, the decree in his favour. I, however, see no violation of Section 19A in case the decree in question is executed in favour of the said Respondent. The relevant part of Section 19-A reads as follows:-

Section 19-A. Bar of future acquisition of land in excess of permissible area

(1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, no person, whether as landowner or tenant, shall acquire or possess by transfer, exchange agreement or settlement any land, which with or without the land already owned or held by him shall in the aggregate exceed the permissible area. xx

XX XX XX XX XX XX

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of Sub-section (1) shall be null and void.

No doubt, it is true in the light of Sub-section (2) quoted above that any transfer, exchange, lease or settlement made in contravention of the provisions of Sub-section (1) is null and void and thus of no effect but the question in the instant case, is, can it be said that Karam Chand Respondent is seeking to possess the suit land by way of transfer, exchange, lease, agreement or settlement or in other words can it possibly be held that the said Respondent is acquiring or going to possess the suit land through any of those modes of acquiring property. To my mind, it is not In any case, even if the decree passed in favour of Karam Chand Respondent is held to be a transfer of the suit property in his favour and the Assistant Collector also had the jurisdiction to determine his permissible area, still to my mind he cannot be disentitled to execute the decree For this conclusion, I seek support from the under mentioned observations of the Full Bench made in Chet Ram v. Amin Lal (1982) 84 P. L. R. 177. That was a case where a similar argument to nullify a decree of redemption of agricultural land in favour of the Plaintiff-mortgagor was raised and repelled in the following manner:-

To conclude it must be held that even though the language of Sub-section (2) of Section 19-A is absolute, yet for the reasons of sound interpretation it must be given a slightly constricting meaning in order to harmonise it with Section 19-B of the Punjab Act. The answer to the question posed at the outset is that a transfer in contravention of Section 19-A(1) would be void only qua the State for the purposes of the Punjab Act, but would be valid and binding between the parties inter se.

Thus, it is patent that the Petitioners cannot deprive Respondent-Karam Chand of the fruits of the decree passed in his favour.

6. Further, it is conceded by the learned Counsel for the Petitioner, that under the Act, it is only the Collector who has to determine the permissible area of a land owner or a tenant. In the light of this concession, it is difficult to appreciate how the Assistant Collector in the instant case can go into the question as to whether Karam Chand decree holder is in possession of land more than his permissible limit as a land owner or as a tenant. If any such jurisdiction is conceded in favour of the Assistant Collector, it is likely to result in anomalous situation, supposing he holds that Karam Chand is in possession of land more than his permissible area and is thus not entitled to execute the decree and later the Collector who is the competent authority under the Act to determine this question comes to the conclusion that he is neither a big land owner nor he possesses land more than a tenant's permissible area In spite of such a conclusion by the Collector, the decree holder already stands deprived of the fruits of the decree passed in his favour. I, therefore, repel the above-noted contention raised by the learned Counsel for the Petitioners

7. For his second contention as noticed above, learned Counsel for the Petitioners urges that in the instant case, till the decree ordered to be registered as a decree of the revenue Court was actually so registered (1st of October, 1973) no execution of the same could be sought by the Respondent-decree holder and his application to

that effect filed on 4th September, 1972 was unsustainable being premature. For this submission of his, learned Counsel depends on certain observations made by the learned Judge of a Division Bench in Wazir Khan v. Rallia Ram (1891) 26 PLR. 68. This argument to my mind, has to be repelled in the light of the phraseology of Sub-section (5) of Section 100 of the Punjab Tenancy Act, which reads as follows:-

5 An order of the High Court under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered. (emphasis supplied).

8. If in the case in hand, the argument of the learned Counsel for the Petitioners that the decree ordered to be registered with the revenue Court becomes a decree of that Court only w e f the date it is so registered is accepted then the above-noted underlined portion of Sub-section (5) becomes wholly redundant. It is an elementary principle of interpretation of statutes that any interpretation of a statutory provision which renders a part of it otiose has to be avoided. The whole purpose of Section 100 including Sub-section (5) noticed above is to validate the proceedings or the decree or the final orders which had already been passed though by a Court which had no jurisdiction in the matter. As per this section, the proceedings taken and the decree passed by a Court though not competent to take or pass the same stands validated by the order of the High Court directing the registration of the decree by the Court of competent jurisdiction. The Act of registering the decree by the Court where it is directed to be registered, to my mind, is only a ministeria(sic) it does not in any way effect the enforcesbility of the decree. That is what is envisaged by the later part of Sub-section (5) which has been underlined above. It is the conceded case that after the direction of the High Court to register the decree by the Court which was competent to pass the same, no adjudication or steps are required to be taken by that Court to validate the decree. As a matter of fact, the decree which had already been passed though by a Court having no jurisdiction in the matter has to be taken as a decree passed by the Court of competent jurisdiction. That is the effect of Sub-section (5)

9. Wazir Khan's case (supra), to which a reference has been made by the learned Counsel for the Petitioners was a case, where the Petitioner before the Court sought to contend that though the suit was triable under the Punjab Tenancy Act, 1887, yet the decree passed by the civil Court in that case "should net be registered as a decree of the revenue Court because this may prejudice him in his appeal." What was contended before the Court by this Petitioner was that though he had filed the appeal before the District Judge within the prescribed period of limitation yet if the decree was directed to be registered with the revenue Court, then the Collector "to whom the appeal will lie from the decree as the decree of the Assistant Collector I Ind Grade may take the same view and reject his appeal on the same ground" that

is, that the appeal before the Collector was barred by time if the period of limitation was to be counted from the date the decree was actually passed by the Munsif or the civil Court. This submission was refuted with the observations "it does not appear to us that we ought to take into account this possibility of the Collector taking the view suggested, as a good cause for refusing to register the decree, on the ground that the Petitioner had been prejudiced by the mistake as to jurisdiction " Further the effect or true import of Sub-section (5) of Section 100 was not considered by their Lordships in that case This is so apparent from the following observations made in that judgment: -

It is not for us to construe on this occasion Sub-section (5) of Section 100 of the Punjab Tenancy Act, 1887. Under Sub-Section 3 we can order a decree to be registered, but Sub-section (5) prescribes the effect of a decree ordered to be registered We may say, however, that it seems difficult to understand how time begins to run on appeal to a higher Revenue Court against a decree of a lower Revenue Court, until that decree has come into existence as the decree of a Revenue Court, or how a decree ordered to be registered as a Revenue decree can come into existence as a decree at any time before the order that it be registered, is made. It may be that the later date is the real time, viz , the date when the decree is registered in pursuance of this Court's order. We make these observations, but give no decision on the points involved." Thus, it is patent that the above-noted decision has no bearing on the facts of this case. Sub-section (5) of Section 100 which has already been reproduced above, to my mind, validates the proceedings or the decree of the Court had no jurisdiction to take or pass the same w.e.f. the date the same were taken or passed by a Court of competent jurisdiction. In a nutshell, the validation order passed by the High Court and directing the decree to be registered by the Court of competent jurisdiction has the effect of making the proceedings or the decree valid right from the day the same were passed. In other words, the validity or the enforceability of the decree is not dependant on the ministerial act of registering the decree as the decree of the revenue or the civil Court as the case may be. It is the order of the High Court which makes it effective as if it were a decree of the competent Court. The learned Counsel for the Petitioners is not in a position to refer to any prescribed procedure for the registration of such a decree and what it actually implies or means so far as the enforceability of the same is concerned. In the light of this, I am of the considered opinion that merely because the decree in question had been registered by the Revenue Court some time later than the date of the application made for execution of the same does not detract or take away anything from the decree and the proceedings in question cannot be nullified on that ground.

10. No other argument has been raised.

11. For the reasons mentioned above, I find no merit in this petition and dismiss the same with costs which I determine at Rs. 500/-.