

(1986) 02 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1368 of 1977

Pritam Kaur and
Others

APPELLANT

Vs

Madan Mohan and
Others

RESPONDENT

Date of Decision: Feb. 21, 1986

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145

Hon'ble Judges: D.V. Sehgal, J

Bench: Single Bench

Advocate: Suresh Amba and Mr. Anil Mittal, for the Appellant; Vinod Sharma and Mr. Sanjeev Binara, for the Respondent

Judgement

D.V. Sehgal, J.

The Plaintiff Appellants filed a suit for permanent injunction resuainig Madan Mohan Defendant-Respondent from interfering with their possession of the land in suit, which, according to them, they had purchased from Bal Krishan Dass, father of Madan Mohan for a consideration of Rs. 1,38,216/- vide sale deed dated 26 9 1969 (Ex P 2). They asserted that they ware put in possession of the land in pursuance of the said sale ; that Bal Krishan Dass was the Karta of the joint Hindu family and had sold the property in that capacity; that Madan Mohan being the eldest son of Bal Krishan Dass was managing the land earlier on behalf of the joint Hindu family and was in occupation of the sane as a licensee ; that the licence was revoked by Bal Krishan Dass and as a result of the sale through sale deed dated 26.9.1969 (Ex. P. 2) they came into possession of the same and Madan Mohan had no right to interfere with their possession. Madan Mohan resisted the suit by filing his written statement wherein he raised various pleas and assorted that in fact he was in possession of the suit land; that proceedings u/s 145 Cr. P. C. were taken up and the Sub Divisional Officer (Civil) vide order dated 12.2 1971 held that it was Madan Mohan who was

entitled to the restoration of possession. On the basis of these and other allegations contained in the pleadings, as many as 8 issues were framed by the learned Subordinate Judge who was trying the suit. However, when its trial was proceeding, an application was made by the Plaintiffs that on coming into force of the Punjab Land Reforms Act (10 of 1973) the land had come to vest in the State Government and mutation No. 384 dated 6.8.1974 to this effect had been recorded and as such the Defendant-Respondents had no right to disturb the Plaintiffs' possession. It appears that the Plaintiffs did not realise the implication of the allegation so made by them which in fact, on amendment of the plaint, was incorporated in para 3 A there of. The Defendant Respondent No 1 also acquiesced in this allegation by agreeing that the land had vested in the State Government, but he asserted that it were not the Plaintiff Appellants but he who was in possession of the suit land. Thereupon the learned Subordinate Judge framed the following two preliminary issues:

(1) Whether the amended plaint is properly signed and verified by all the Plaintiffs ?
If not, its effect ?

(2) Whether the suit has become infructuous ?

2. Issue No. (1) was decided by the learned trial Court in favour of the Plaintiffs and against the Defendants. On issue No 2(2), however, he held that since by virtue of mutation dated 6.8.1974 the suit land had vested in the State Government the Plaintiffs could not maintain the suit as their right in the suit land had been extinguished and consequently the suit had become infructuous. The suit was dismissed by the learned Subordinate-Judge vide his judgment and decree dated 29 10.1975 without entering upon the merits of the controversy in the suit. The appeal filed by the Plaintiff-Appellants also failed and was dismissed by the learned Additional District Judge, Amritsar, vide judgment and decree dated 4 5 1977. They preferred the present regular second appeal in this Court.

3. At the time of arguments before me, the learned Counsel for both the parties contended that the possession of land has never been taken by the State Government in fact, according to the mutation Ex. Px the ownership as also the possession of the land on the date of mutation was with the Appellants and it is their assertion that they continue to be in possession of the suit land. Respondent No 1 on the other hand has asserted that a dispute regarding possession had wrongly been raised by the Appellants and the Sub Divisional Officer (Civil) in proceedings u/s 145, Cr P. C. held vide his order dated 12 2.1971 that he was entitled to the restoration of possession. Consequently he has a right to possess the land and not the Appellants. At any rate, it is not the case of either of the parties that the possession of the land has at any stage been taken by the State Government. Section 8 of the Punjab Land Reforms Act (10 of 1973) lays down in categorical terms that the surplus area declared as such under the Punjab Law or the PEPSU Law, which has not been utilized till the commencement of the said Act, shall on the date

on which possession thereof is taken by or on behalf of the State Government vest in the State Government free from all encumbrances When the event of taking possession of the suit land by the State Government has not taken place, the question of its having vested in it by virtue of Section 8 (bid does not arise. The finding to the contrary recorded by the learned Courts below is not in conformity with law and, therefore, I set aside the same. The suit has thus not become infrustuous.

4. Consequently, I allow this appeal, set aside the judgments and decrees dated 29.10.1975 and 4.5.1977 of the learned Subordinate Judge and the learned Additional District Judge respectively, by returning a finding on issue No, (2) in the negative holding that the suit has not become infructuous, and remand the same to the learned Subordinate Judge, Amritsar, for its decision on merits.

5. The parties are directed to appear in the Court of the learned Senior Sub Judge, Amritsar, on 2.4.1986 Since the suit was instituted as far back as on 26.2.1975 and a period of 11 years has elapsed since then the learned trial Court shall proceed to decide the same in accordance with law expeditiously. There shall be no order as to costs.