
Badri Parshad Vs Birbal

Revision Petition No. 4393 of 1999

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 29, 2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) & Section 9#Punjab Security of Land Tenures Act, 1953
& Section 25

Citation: (2002) 2 ILR (P&H) 278 : (2002) 1 RCR(Civil) 651

Hon'ble Judges: Bakhshish Kaur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Bakhshish Kaur, J.

Badri Parshad has filed this revision petition under Article 227 of the Constitution of India for issuance of an order, or,

direction setting aside/quashing the order dt. 2.8.1999 (Annexure P-14) passed by the Additional District Judge, Sirsa and the Additional Civil

Judge (Sr. Division), Dabwali.

2. Facts giving rising to this petition, briefly stated, are as under:-

The petitioner was a big land owner. Surplus area case of the petitioner was decided by the Collector, Surplus Area, Sirsa 28.9.1961, thereby

reserving 60 ordinary acres as permitted by the Act as land owner's permissible area.

3. On 12.12.1968, Birbal-respondent No. 1, filed an application for purchase of land measuring 125 kanals 17 marlas which was under his

possession. This land was owned by the petitioner and formed part of 60 ordinary acres left as permissible area.

4. The Asstt. Collector 1st Grade, Sirsa, had dismissed the aforesaid application u/s 18 of the Punjab Security of Land Tenures Act, 1953

(hereinafter referred to as "the Act"). Copy of order is Annexure P-1. Had not filed any appeal. The petitioner then filed an application for

ejection of respondent No. 1, which was allowed by the Asstt. Collector 1st Grade, vide his order dated 3.9.1974. He was ordered to be

ejected from the land measuring 125 kanals 12 marlas. Since respondent No. 1 did not pay the rent in respect of the remaining land for which his

ejection had been ordered. The petitioner then filed an application for ejection on the ground of non-payment of rent, which was allowed by the

Asstt. Collector 2nd Grade on 21.1.1983.

5. Respondent No.1, aggrieved by the order dated 3.9.1974 preferred an appeal before the Collector, Dabwali, which dismissed on

11.11.1975. Thereafter, no further appeal under the Act was filed by him. He had filed another similar appeal before the Collector, Dabwali

against the order dated 21.1.1983 passed by the Asstt. Collector 2nd Grade. That too, was dismissed on 4.1.1985. The, both the orders dated

11.11.1975 and 4.1.1985 had attained finality.

6. The respondents even after passing of the order of ejection as above, had not vacated the land. With a view to remain in unauthorised

possession of the land which has been declared surplus to be the reserved area of the land owner, he had filed Civil Suit No. 123 of 1989 seeking

declaration that he was in cultivating possession of the suit land on payment of 1/4th batai bearing No. 125 kanals 12 marlas and the orders passed

by the revenue courts/officers ordering the ejection were illegal, and liable to be set aside. The suit was dismissed on 26.10.1989 on the ground

that it was not only barred by time but the Civil Court had got no jurisdiction to entertain the suit (Annexure P-6). No appeal was filed against the

judgment of the Civil Court.

7. Respondent No.1 after a lapse of 30 years challenged the order dated 28.9.1961 passed by the Collector-respondents No. 2. Before the

Commissioner, Hisar Division, Hisar. This appeal was dismissed on 22nd April, 1994.

8. Aggrieved by that order, he preferred a revision before the Financial Commissioner, which too was dismissed on 18th April, 1996.

9. After having exhausted all the remedies available to him under the Act, he again filed a civil suit No. 298 of 1996 dated 22nd February 1996

without making reference to the previous orders passed by the revenue authorities. The petitioner, who is defendant before the trial Court in the

suit had filed a written statement and raised preliminary objections regarding maintainability, limitation of filing of suit etc. It was pleaded, inter alia

that he has no locus standi or cause of action to file the suit. It is bad for nonjoinder of necessary parties. He has not come to the court with clean

hands. He has suppressed material facts from the Court. The suit is also barred by the principle of res judicata.

10. Issues arising from the pleadings of the parties were framed by the Trial Court. One of the issues relating to jurisdiction of the Court was

treated as preliminary. It was numbered as No. 5 and decided against the petitioner on 19.7.97. Copy of the order annexed is Annexure P-6.

11. Aggrieved by the order the petitioner had preferred an appeal which was dismissed on 2.8.1999 by the learned Additional Distt. Judge, Sirsa

on the ground that it is not maintainable (Annexure P-14).

12. The petitioner has thus prayed for setting aside or quashing the order under Article 227 of the Constitution of India.

13. I have heard Shri Sanjay Bansal, Advocate for the petitioner and Mrs. Abha Rathore, Advocate, for the respondents and have gone through

the record carefully.

14. Sh. Bansal contended that the petitioner was erroneously advised to file an appeal against the order dated 19.7.1997 passed by the trial Court.

In fact, revision petition was required to be filed u/s 115 of the Code or a petition under Article 227 of the Constitution.

15. Concededly, the appeal preferred by the petitioner against the order impugned was dismissed as not maintainable, as the order deciding

preliminary issue is not appealable either u/s 104 or under Order 43 of the Code of Civil Procedure. The learned Additional Distt. Judge was also

of the view that the decision on issue No. 5 that the Civil Court has no jurisdiction to try the suit does not finally decide the issue which is still

pending and as such, the impugned order does not amount to a decree of final order against which an appeal lies u/s 96 of the code.

16. It is, therefore, urged that if the first Appellate Court was of the view that the appeal was not maintainable u/s 96 or u/s 104 or Order 43 of the

Code, then the Court should have returned the appeal to be presented before a Court of competent jurisdiction instead of dismissing the appeal,

being not maintainable.

17. Now advertent to the revisional jurisdiction of this Court. Whether the objection raised regarding the maintainability of the suit can be looked

into on the basis of the orders passed by the Courts below. In this context, reference can be easily made to Industrial Credit and Investment

Corporation of India Ltd. v. Grapco Industries Ltd and others AIR 1975 SC 1975. It has been observed that there was no bar on the High Court

to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. It is

further held, that, "there is no doubt that the High Court can even interfere with interim orders of the Courts and Tribunals under Article 227 of the

Constitution if the order is made without jurisdiction. But then too technical approach is to be avoided.

18. In somewhat similar circumstances, same situation had arisen in Baby Vs. Travancore Devaswom Board and Others, It was a case where

order passed by the learned tribunal under Kerala Land Reforms Act, was affirmed by the Appellate Court but the High Court had set aside the

judgment of the Appellate Authority on the ground that several material documents including judicial proceedings were not adverted to by the

Tribunal. The High Court also held that the legal effect of these documents was not considered by the Tribunal. On these grounds, it was argued

that the High Court was not entitled to interfere u/s 103 of the Kerala Land Reforms Act. Dismissing the appeal filed by the appellant in that case,

the Apex Court observed as under:-

But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the

orders passed by the Tribunals if the findings of facts had been arrived at by non-consideration of the relevant and material documents the

consideration of which could have led to an opposite conclusion This power of the High Court under the Constitution of India is always in addition

to the powers of revision u/s 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the Tribunals. We do not,

therefore, interfere under Article 136 of the Constitution of India. The appeals fail and are dismissed"".

19. In the case in hand also the first Appellate Court dismissed the appeal, being not maintainable but the trial Court while deciding issue No. 5

which was treated as preliminary, had not taken into consideration and the facts already brought on record.

20. To quote a few instances, Birbal had filed a civil suit No. 123 of 89 for declaration that he is in cultivating possession of suit land on 1/4 batai

as a tenant at will. He had also challenged the order passed by the revenue Court and competent authority under Punjab Security of Land Tenant

Act. The suit was dismissed as per Annexure P-6, that the Civil Court has no jurisdiction, and that it is barred by time. No appeal was preferred

against this judgment dt. 26.10.1989.

21. Birbal-respondent No. 1 had filed a suit for declaration that he has been in cultivating possession as a tenant ""gair-maurussi"" before 15.4.1953

under Badri Parshad defendant No. 2 and his predecessor. He had illegally become land occupancy tenant over the suit land, therefore, entitled to

allotment of this land but the defendant Badri Parshad in collusion with defendant No. 1, i.e. the Collector Surplus Area, Sirsa got passed the order

dated 28.9.1961 illegally, against the law and facts and without notice and even without hearing the petitioner. Therefore, this order is liable to be

set aside. He had also prayed that defendant No. 2 i.e. Badri Parshad be restrained from ejecting him and recovering batai for the suit land.

22. It is apparent that the plaintiff/respondent (hereinafter referred to as the respondent) is challenging the order dated 28.9.1961 passed by the

revenue authority, as according to him, it has been passed by practicing fraud and in collusion with the petitioner Badri Parshad. Whether the order

passed by the revenue authority on this ground can be challenged in a civil suit because section 25 of the Punjab Security of Land Tenures Act,

bars jurisdiction of the Civil Court to try and entertain the suit. Section 25 of the Act reads thus :-

Section 25 - Section bars the jurisdiction of Civil Court to try and adjudicate any proceeding or action taken under the Act"".

23. In the case in hand, plaintiff has availed all the remedies available to him before the revenue courts unsuccessfully. It is also pertinent to note

that the order dated 28.9.1961 passed by to Collector, Surplus Area, Sirsa which is being challenged by way of filing an appeal, which was

dismissed by the Commissioner, Hisar Division, Sirsa on 22nd April, 1994. Copy of the order is Annexure P-7.

24. The order passed by the Commissioner was further challenged before the Financial Commissioner Haryana and it was dismissed on 18th

April, 1996, as per the order Annexure P-8. Thus, where the revenue Court have already recorded findings, the Civil Court has also decided the

suit against respondent vide Annexure P-6 whether the plaintiff-respondent can challenge the validity of the order passed 28.9.1961 passed by the

Collector Surplus Area by way of filing a civil suit for declaration in the years 1996 nearly after 35 years? Certainly not. The jurisdiction of the Civil

Court is, therefore, barred to entertain the suit, where the plaintiff claims himself to be tenant on batai and that the order passed by the revenue

authority is illegal having been passed in collusion with the petitioner.

25. *Jiwan v. Ram Sarup* 1998 1 P.L.R. 349 was a case under the Punjab Tenancy Act and the plaintiff in the suit had sought declaration to be

owner in possession claiming that he is in possession of the suit land as occupancy tenant and so also his predecessor in interest on payment of

nominal rent and on coming into force of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, with effect from 15th June, 1952, had

automatically become owner of the suit land. It was, therefore, observed that the question whether he is a occupancy tenant, or, a tenant at will,

has to be decided by the revenue court only and not by the civil court. The suit is not triable by the civil court. It was also observed that Section 10

of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952, provides that every award or order made by the Collector,

Commissioner or Financial Commissioner, shall be final, and no proceedings or order taken or made under this Act, shall be called in question by

any court or before any officer or authority. Thus, Section 10 bars the jurisdiction of any Court or before any officer or authority to go into the

validity of every award or order made by the Collector, Commissioner or Financial Commissioner, to which finality is attained.

26. The jurisdiction of the civil court is also barred to entertain the suit wherein validity of an order passed on 28.9.1961 has been challenged The

facts of the case are akin to the facts reported as *Sorupa and Ors. v. The Panchayati Akhara, Kala Bara Udasian, Thanesar and Ors.* 1998 2

P.L.R. 713. The plaintiff in that case had filed a suit for declaration to the effect that the order of the Collector dated 15.3.1961 declaring the land

surplus and also subsequent orders are illegal, void and without jurisdiction. While dealing the matter with the point of limitation, the Hon"ble Mr.

Justice V.K. Jhanji in para 5 of the judgment observed as under:-

A suit for declaration that the order of the Collector declaring the land surplus is illegal, void and abinitio, is not covered by any specific article of

the Limitation Act, and therefore, it must fall within the residuary article. Residuary Article 113 provides a period of three years for institution of a

suit for which no period of limitation has been provided elsewhere in the Schedule of Limitation Act. This period has to be reckoned from the date

the right to sue accrues. Right to sue means a right to obtain relief by means of legal process.

27. The respondent after availing all the remedies available to him by filing appeals and revision before the revenue authorities and all resulted in to

dismissal of the his case, cannot invoke jurisdiction of the civil court by filing a suit for declaration after 35 years of the passing of the order. It has

also been pointed out during the course of arguments that the plaintiff had concealed material facts by not disclosing the factum of previous litigation

which had been going on between the parties before the revenue authorities as well as before the Civil Court. It is well settled that when a

competent authority passed an order in exercise of jurisdiction vested in it and the same is not void, then the civil court will have no jurisdiction to

entertain the suit.

28. For the aforesaid reasons, this petition is allowed with costs assessed as Rs. 5000/-. The impugned order deciding issue No. 5 against the

petitioner is set aside. As a consequence thereof, the suit for declaration filed by the plaintiff-respondent is bound to be dismissed as the civil court

had got no jurisdiction to entertain the suit.