

(2010) 09 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sher Singh and Others

APPELLANT

Vs

Tikka Singh (since deceased) and
Others

RESPONDENT

Date of Decision: Sept. 1, 2010

Acts Referred:

- Punjab Land Revenue Act, 1887 - Section 158(3)
- Punjab Tenancy Act, 1887 - Section 4(5), 4(7), 77, 77(3)

Citation: (2011) 161 PLR 154 : (2010) 4 RCR(Civil) 678

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

Tersenessly, the facts, relevant for a limited purpose of deciding the core controversy involved in the present appeal and emanating from the record, are that Tikka Singh and others sons of Man Singh respondent-plaintiffs (hereinafter to be referred as "the plaintiffs") filed the suit against Sher Singh and others appellant-defendants (hereinafter to be referred as "the defendants") seeking a decree of rendition of accounts, inter-alia, pleading that Smt. Thakri widow of Nihala was the previous owner of the land in dispute and it was leased out to Man Singh and Biju sons of Dhan Singh and others, vide registered lease deed dated 4.7.1953 for a period of 30 years. Smt. Thakri had died and the plaintiffs were stated to have inherited and become owners of the suit land, which continued to be in possession of the defendants as lessees. The plaintiffs claimed that the defendants are liable to rendition of accounts with effect from Rabi 1983 onwards and to pay the arrears of rent of the land, which is under their un-authorized possession, after the expiry of lease period of 30 years. On the basis of aforesaid allegations, the plaintiffs filed the suit for a decree of rendition of accounts against the defendants in the manner

indicated here-in-above.

2. The defendants contested the suit and filed the written statement, inter-alia, pleading certain preliminary objections of, maintainability of suit; locus standi of the plaintiffs and jurisdiction of the Civil Court. On merits, according to the defendants, the plaintiffs are not the owners but they (defendants) are owners and in possession of the suit land. It will not be out of place to mention here that the defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

3. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the plaintiffs filed the replication. In the wake of pleadings of the parties, the trial Court framed the relevant issues including issue No. 5 (whether the Civil Court has no jurisdiction to try the suit), which was treated as preliminary issue.

4. The trial Court, while deciding the preliminary issue No. 5 in favour of the defendants, dismissed the suit of the plaintiffs, by virtue of judgment dated 10.5.1997.

5. Aggrieved by the judgment of the trial Court, the plaintiffs filed the appeal. The first appellate Court accepted the appeal, set aside the judgment and remanded the case back to the trial Court for its fresh decision, vide impugned judgment dated 14.10.1998.

6. The appellant-defendants did not feel satisfied with the impugned judgment of the first appellate Court and filed the present appeal. That is how, I am seized of the matter.

7. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the appeal.

8. Ex facie, the argument of learned Counsel for the appellant-defendants that since the Civil Court did not have the jurisdiction to entertain and try the suit, so, the first appellate Court fell in error in remanding the case back to the trial Court for its fresh decision, is neither tenable nor the observations of this Court in cases *Sarwan Singh v. Ajmer Singh* 1992 P.L.J. 422; *Amar Singh and Anr. v. Dalip* 1981 P.L.J. 539 and *Harphul and Ors. v. Sehja* 1967 P.L.R. 901 are at all applicable to the present controversy, wherein, it was observed that "if there is an established relationship of landlord and tenant, then the Civil Court has got no jurisdiction and the ejectment petition has to be referred to the revenue Court. The decision of revenue Court u/s 77 of the Punjab Tenancy Act (for short "the Act") upon the relationship of landlord and tenant between the parties does not operate as res-judicata and is open to challenge in a subsequent suit." Hardly, there is any dispute with regard to the law laid down in the aforesaid judgments, but the same would not come to the rescue of

the appellant-defendants. In the instant case, the parties are claiming their respective ownership of the suit land and the relationship of landlord and tenant has been clearly denied by the defendants.

9. The bare perusal of the record would reveal that the main ground, which appears to have been weighed with the trial Court, was that the Civil Court did not have the jurisdiction, in view of Section 77 of the Act. In this respect, the first appellate Court has observed as under:

In the face of the defendants/respondents having thus denied relationship of landlord and tenant amongst plaintiffs on the one hand and themselves on the other hand respectively, no question of the defendants/respondents having been "tenants" within the meaning of Section 4(5) or (7) of the Punjab Tenancy Act, 1887 (hereinafter referred to as the Tenancy Act) could have been arisen so as to render the dispute triable by the revenue court as per provisions of Section 77(3) of the Tenancy Act. I stand fortified in this view from the observation of the Hon'ble Supreme Court in the case titled *Richpal Singh and Ors. v. Dalip* 1987 572 which though cited on behalf of the plaintiffs and referred to in para No. 6 (at page 3) of the impugned judgment and decree dated 10.5.97 has not been adverted to by the trial Court. In fact, the trial court has not made any mention whatsoever as to why this authority was not being relied upon though it squarely covers the issue in as much as it has been laid down therein that the determination of the question as to whether or not a person is a tenant or a landlord is not within the jurisdiction of revenue court and such a dispute can only be decided by the Civil Court notwithstanding the provisions of Section 77 of the Tenancy Act. In the face of the relationship of landlord and tenant between the parties to the suit being not admitted but being contained by the defendants, observations in the case titled *Kurdia and Ors. v. Surta and Ors.* reported in 1991 PLJ 726 cited on behalf of the defendants/respondents are not attracted to the facts of the case in hand. Consequently, the bar of jurisdiction contemplated in Section 158(3) of the Punjab Land Revenue Act would not come into play in the instant case.

10. Having regard to the rival contentions of the learned Counsel for the parties relatable to record of the case, to me, the trial Court has completely ignored the real controversy between the parties, which was rectified by the first appellate Court.

11. As is evident from the record that the plaintiffs filed the suit on the ground that Smt. Thakri was the previous owner of the suit land, which was leased out to the defendants for a period of 30 years, vide lease deed dated 4.7.1953. After her death, they were stated to have succeeded and inherited the property in dispute, but they (defendants) have stoutly denied their ownership. As the parties to the lis are claiming their respective ownership of the land in dispute, therefore, the relationship of lessors and lessees between the parties is seriously in dispute.

12. Meaning thereby, both the parties are claiming their respective ownership of the suit property and relationship of lessors and lessees is not at all established. In that eventuality, only the Civil Court has got the jurisdiction to decide the question of title between the parties. Therefore, the law laid down by Hon"ble Apex Court in case [Richpal Singh and Others Vs. Dalip](#), "mutatis mutandis" is applicable to the facts of the present case, wherein, it was held that "the determination of the question as to whether or not a person is a tenant or a landlord is not within the jurisdiction of revenue court and such a dispute can only be decided by the Civil Court notwithstanding the provisions of Section 77 of the Tenancy Act. In this manner, the Ist appellate Court has rightly remanded the case back to the trial Court. Thus, the contrary arguments of the learned Counsel for the appellant-defendants "stricto sensu" liable to be and are hereby repelled and the impugned judgment of the Ist appellate Court deserves to be and is hereby maintained in the obtaining circumstances of the case.

13. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

14. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the suit, as there is no merit, therefore, the instant appeal is dismissed.