Richpal Singh and Others

Vs

Dalip

Civil Appeals Nos. 1741 and 1742 of 1981

(Sabyasachi Kukharji, G. L. Oza JJ)

09.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1.How far an order directing eviction of a person by the Revenue court under Section 77(3) of the Punjab Tenancy Act, 1887 (hereinafter called 'the Act') operates as res judicata for a title suit filed by a person claiming to be a mortgagee and not a tenant of the alleged landlord, is the question that arises in this appeal by special leave from the Full Bench decision of the High Court of Punjab and Haryana dated March 12, 1981 in second appeal. By the impugned order and judgment the High Court has dismissed the appeal of the appellants and affirmed the judgment and order dated September 7, 1978 of the Additional District Judge, Gurgaon reversing the judgment and order of Sub-Judge First Class, Ballabgarh dated November 4, 1977 dismissing the suit of the respondent.

2. It appears that the appellants filed proceedings in the Court of Assistance Collector First Grade Ballabgarh seeking ejectment of the respondent from his lands on July 29, 1975 under Section 77(3) proviso 2(e) of the Act on the ground that the respondent-tenant had defaulted in the payment of rent. The suit was decreed on October 29, 1976. In execution of the decree the respondent was from the suit land. NO appeal though provided under the said Act was filed by the respondent from the said decree. The respondent however, filed a suit in the civil court against the appellant alleging that he in fact was a mortgagee in possession of the suit land and not a tenant and that the decree of ejectment dated October 29, 1976 by the Revenue Court was without jurisdiction and, therefore, a nullity. The respondent claimed to be restored the possession of the suit land from which he had been wrongly ousted by the Revenue Court. The suit was dismissed by the learned Subordinate Judge on November 4, 1977 holding that the claim of the respondent to be a mortgagee in possession of the suit land was wrong and that the order of the Revenue Court was perfectly in order and was within that court's jurisdictional competence. It was alleged that it was of binding nature on the respondent and was not capable to challenge the same in subsequent proceedings. The claim, it was asserted, by the respondent in the subsequent suit, was barred by the principles of res judicata. The respondent lost. He filed an appeal against the said order of learned Subordinate Judge. The learned Additional District Judge, Gurgaon vide his order dated September 7, 1978 reversed the findings of the trial court and decreed the suit of the respondent. Against the said order of the learned Additional District Judge the appellants filed regular second appeals which were placed for disposal before one of the learned judges of the High Court of Punjab and Haryana at Chandigarh. After hearing counsel for the parties the learned Judge was of the view that there were conflicting judgments on the points for determination in the case which were of importance and the matter was referred to the Hon'ble Chief Justice of the said High Court for the constitution of a larger Bench for the determination of the points in controversy. The question referred to a larger Bench was whether,

the decision of Rent Controller under the Rent Control laws or a Revenue Court under Section 77 of the Punjab Tenancy Act upon the relationship of landlord and tenant between the parties operates as res judicata and is not open to challenge in a subsequent suit or in other collateral proceedings between the parties. The learned Chief Justice constituted a Full Bench of three learned judge for resolving the conflict pointed out in the refer in order. The three learned judges of the Full Bench have given three separate judgments and ultimately the case came to be decided in accordance with the majority view.

3. The order of the Full Bench was that in accordance with the majority view it was held that the decision of the Revenue Court under Section 77 of the Punjab Tenancy Act upon the relationship of landlord and tenant between the parties would not operate as res judicata and it would be open to challenge in a subsequent suit or any other collateral proceedings between the parties. The Full Bench thereafter directed the matter to go back to the learned Single Judge for disposal in accordance with the decision of the Full Bench Aggrieved by the aforesaid order and decision the appellants have come up in appeal before this Court.

4. It may be mentioned that of the three learned judges, Sandhawalia, C. J. was of the view that it was to operate as res judicata, but the other two learned judges, namely, J. V. Gupta, J. and S. P. Goyal, J. held contrary views. It is the propriety. and the validity of the majority view of the Full Bench which calls for an examination in this appeal.

5. In order to appreciate the controversy in appeal it is necessary to refer to the relevant provisions of the said Act. The preamble of the Act states that it was an Act to amend the law relating to the tenancy of land in Punjab. These provinces of Punjab had the distinction between the occupancy tenants and tenant at will with the rest of its early revenue code from the United Provinces. The possession of a right to fixity of tenure by many cultivators in Northern Indian was early recognised. Indeed the fact that in Lower Bengal the connection of persons who were recognised as proprietors with the land was often far more recent than that of the cultivators inevitably suggested of persons who were recognised as proprietors with the land was often far more recent than that of the cultivators inevitably suggested that the latter had rights in the soil that required protection. Fixity of tenure of resident cultivators at rents determined by authority was prominent feature of the Bengal settlement as originally planned. Regulation 28 of 1803 professed to extend the Bengal system to the North Western Provinces, but it left the subject of tenant right in a vague and uncertain condition. The provisions of Regulation 7 of 1922 were more definite. By its ninth section Settlement Officers were required not only to prepare a record of "persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest" in it, that is to say, of proprietors, but also of "the rate per bigha .... demandable from the resident cultivators not claiming any transferable property in the soil whether possessing the right of hereditary occupancy or not". It is not necessary to trace the history this (sic the) settlement laws which can be found in Douie's Settlement Manual, 4th edition. Twelve years uninterrupted possession of a holding at the same rate of rent was considered as a sufficient proof of occupancy right in the United Provinces. The twelve years' rule was very generally adopted in early Punjab settlements, though the best revenue officers held that it should not be regarded as the sole criterion, and that the quality, as well as the length of occupation should be considered. The Act in question was passed to amend the law of tenancy in Punjab which was later the object of the Act to protect the tenants from hate exaction of the landlords. The tenants as usual in other parts of the world were in many cases peculiarly liable to oppression or duress from their landlords and in order to protect them quite effectively from the possibility of any such oppression or duress the Act was passed.

6. The overall scheme of the Act is to provide speedy remedies with regard to disputes between the landlords and tenants and also under what circumstances that relationship comes to an end. It is appropriate to bear in mind the whole basic question involved in this appeal is whether the courts created by this act have limited powers and jurisdiction or plenary powers and jurisdiction. In this appeal we are concerned with the amplitude of the jurisdiction of the courts under Section 77 of the Act which deals with courts and suits cognizable by them. Relevant portion of Section 77 of the Act provides as follows :

> 77. Revenue Courts and suits cognizable by them. -
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> (1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3), or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.
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> (3) 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 :
>
> #Provided that - * * * * * * First Group * * * Second Group * * *##

7. The controversy with which we are concerned in this appeal is a type of suits indicated in second group under clause (e), namely, suits by a landlord to eject a tenant.

8. The question of res judicata was analysed in the background of land acquisition proceedings by this Court in Raj Lakshmi Dasi v. Banamali Sen (1953) SCR 154 :AIR 1953 SC 33. There this Court observed that the right to receive compensation for property acquired in land acquisition proceedings as between rival claimants depended on the title to the property acquired and the dispute as to title was raised by the parties and had to be decided by the Land Acquisition Judge after contest; so this decision as to title operates as res judicata in a subsequent suit between the same parties on the question of title. The binding force of a judgment delivered under the Land Acquisition Act depended on general principles of law and not on Section 11 of the Civil Procedure Code, and the decision of a Land Acquisition Judge would operate as res judicata even though he was not competent to try the subsequent suit. It has to be emphasised, however, that the right to compensation depended upon the title, but here in the instant case the right to ejectment existed only if the relationship of landlord and tenant existed. The Revenue Court did not have jurisdiction whether the claimant was the landlord to be entitled to eject the tenant.

9. Our attention was drawn by Sri Harbans Lal, learned counsel appearing for the appellants to Section 98 of the Act, as to the power of the revenue Court to refer to the civil court a decision by the Revenue Court if it thought proper and also to Section 99, where there is power to refer to High Court question as to jurisdiction. These provisions, in our opinion, do not in any way affect the question whether the decision of the Revenue Court under the Revenue Act can operate as res judicata in certain cases like the present. The limits of the jurisdiction would be apparent by the fact that all suits by a landlord to eject a tenant do not encompass suits to decide whether a person is a tenant or not or whether the plaintiff is a landlord or not. The question was answered by this Court in Om Prakash Gupta v. Rattan Singh ((1964) 1 SCR 259) where Sinha, C. J. dealing with the Delhi Rent Control Act observed at pages 264 and 265 as follows :

The most important question that arises for determination in this case is whether or not the Rent

Control authorities had jurisdiction in the matter in controversy in this case. Ordinarily it is for the civil courts to determine whether and, if so, what jural relationship exists between the litigating parties. But the Act has been enacted to provide for the control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be a pre-existing relationship. The Act is directed to control some of the terms and incidents of the relationship. Hence, there is no express provision in the Act empowering the Controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant. In most cases such a question would not arise for determination by the authorities under the Act. A landlord must be very ill-advised to start proceedings under the Act, if there is no such relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the civil courts, untrammeled by the provisions of the Act. It is only when he happens to be the tenant of premises in an urban area that the provisions of the Act are attracted.

10. In Raja Durga Singh of Solan v. Tholu ((1963) 2 SCR 693 : AIR 1963 SC 361), this Court had occasion to consider the question of res judicata in the background of the jurisdiction of the court. That was a case under section 77 of the Punjab Tenancy Act. In that case the appellant had filed a suit before the civil court for the ejectment of the respondents therein on the ground that they were licensees. The respondents claimed that they were occupancy tenants and contended that under Section 77 of the Punjab Tenancy Act, 1887, the suit was triable by a Revenue Court only and not by the civil court. The trial court and the first appellate court decreed the suit holding that the respondents were not tenants. On second the Judicial Commissioner held that the respondents were occupancy tenants and that the civil court had no jurisdiction to entertain the suit. It was held by this Court that the civil court had jurisdiction to entertain the suit and Section 77 of the Punjab Tenancy Act was applicable "only to suits between landlord and tenants where there was no dispute that the person cultivating the land was a tenant". But there the status of the defendant as a tenant was not admitted by the landlord, Section 77 did not bar a suit in a civil court. This Court held that it would, therefore, be reasonable to infer that the legislature barred only those suits which form the cognizance of a civil court where there was no dispute between the parties that person cultivating land or who was in possession of land was a tenant. This precisely what has been held in the two decisions of the Lahore High Court (Sham Singh v. Amarjit Singh, ILR (1930) 12 Lah 111; Baru v. Nader, ILR (1942) 24 Lah 191 (FB) where (sic about which) there was reference at pages 698-699 of the report :

In the first of these two cases, Tek Chand, J. had observed :

> It is obvious that the bar under clause (4) is applicable to those cases only only in which the relationship of landlord and tenant is admitted an the object of the suit is to determine the nature of the tenancy i.e. whether the status of the tenant falls under Section 5, 6, 7 or 8 of the Act.

In that case the suit was instituted by someone claiming to succeed to the tenancy of certain land on the death of the occupancy tenant. The learned Judge observed :

> In a suit like the one before us the point for decision is not the nature of the tenancy, but whether the defendant is related to the deceased tenant and if so whether their common ancestor had occupied the land. If these facts are established,the claimant ipso facto succeeds to the occupancy tenancy. But if they are found against him, he is not a tenant at all.

As these facts were not established the High Court held that the landlord was entitled to sue the defendant who had entered on the land asserting claim to be a collateral of the deceased tenant but who failed to substantiate his claim. This view was affirmed by a Full Bench consisting of five judges in the other Lahore case. In Daya Ram v. Jagir Singh (AIR 1956 HP 61) the same Judicial Commissioner who decided the appeal before us has expressed the view that where in a suit for ejectment the existence of the relationship of landlord and tenant is not admitted by the parties the civil court had jurisdiction to try the suit and that such a suit did not fall under Section 77(3) of the Act. In Magiti Sasamal v. Pandab Bissoi ((1962) 3 SCR 673 : AIR 1962 SC 547) this Court was considering the provision of Section 17(1) of the Orissa Tenants Protection Act, 1948 (3 of 1948). The provisions of that section run thus :

> Any dispute, between the tenant and the landlord as regards, (a) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act, or (b) misuse of the land by tenant, or (c) failure of the tenant to cultivate the land properly, or (d) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (e) the quantity of the produce payable to the landlord as rent, shall be decided by the Collector on the application of either of the parties.

It was contended in that case on behalf of the respondents who claimed to be tenants that suit for permanent injunction instituted by the appellant landlord was barred by the provisions of Section 7(1). Dealing with this contention this Court observed as follows :

> In other words, Section 7(1) postulates the relationship of tenants and landlord between the parties and proceeds to provided for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject matter of Section 7(1) must be in regard to the five categories. That is the plain and obvious construction of the words 'any dispute as regard's. On this construction it would be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of Section 7(1) is unambiguous and clear. It refers to the tenant and landlord as such and it contemplates disputes o the specified character arising between them. Therefore, in our opinion, even on a liberal construction of Section 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of relationship of landlord and tenant falls to be determined by the Collector under Section 7(1).

11. As regards the said observations, insofar as the essential facts are concerned, precisely the same is the position in the instant appeal. Here the respondent is claiming to be a mortgagee in possession and not a tenant in possession. In Magiti Sasamal v. Pandab Bissoi ((1962) 3 SCR 673 : AIR 1962 SC 547), the appellant had filed in the civil court a suit for permanent injunction restraining the respondents from entering the lands in suit on the allegation that the lands belonged to him and were in his cultivatory possession for many years and the respondents had no right or little and had never cultivated them. The respondents contended that they were tenants of portions of the said lands and were in cultivating possession of the same as tenants. The question which arose for decision was whether having regard to the provisions of Section 7(1) of the Orissa Tenants Protection Act, 1948, the civil court had jurisdiction to entertain the suit which involved a dispute as to the relationship of landlord and tenant between the parties. It was held that even on a liberal construction of Section 7(1) of the Act, it cannot be held that disputes as regards the existence of the relationship of landlord

and tenant fall to be determined by the Collector under that section. Disputes which are entrusted to the Collector under Section 7(1) are the simple disputes specified therein in the five categories and do not include a serious dispute as to the relationship between the parties as landlord and tenant.

12. It is well settled that ouster of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established.

13. This question was again viewed in the background of the Slum Areas (Improvement and Clearance) Act, 1956 in Lal Chand (dead) by Lrs v. Radha Kishan ((1977) 2 SCR 522 : (1977) 2 SCC 88 : AIR 1977 SC 789), where this Court reiterated that Section 11 was not exhaustive and the principle which motivates that section could be extended to cases which do not fall strictly within the letter of the law. This Court further reiterated that the principle of res judicata was conceived in the larger public interest which required that all litigation must, sooner than later, come to an end. This Court in the State of Tamil Nadu v. Ramalinga Samigal Madam (AIR 1986 SC 794 : (1985) 4 SCC 10 : 1985 Supp 1 SCR 63) has analysed the position in paragraph 8 as follows : (SCC pp. 17-18, para 8)

The principles bearing on the question as to when exclusion of the civil court's jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In Secretary of State v. Mask and Co. (AIR 1940 PC 105, 110 : (1940) 67 IA 222 :188 IC 231) , the Privy Council at page 236 of the Report has observed thus :

> It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

In Dhulabhai v. State of Madhya Pradesh ((1968) 3 SCR 662 : AIR 1969 SC 78 : (1968) 22 STC 416) Hidayatullah, C. J., speaking for the court, on an analysis of the various decisions cited before the court expressing diverse views, culled out as many as seven propositions; out of them the first two which are material for our purposes are these :

> (1) Where the statute gives a finality to the orders of the special tribunal the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure.
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> (2) Where there is no an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is not express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and

provides for the determination of the right or liability and further lays down that all question about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

14. Applying the aforesaid principles, it appears to us that if the dispute was as to the nature of the relationship of landlord and tenant between the parties, the Revenue Court under the Punjab Tenancy Act had no jurisdiction; when there was admitted position, the relationship of landlord and tenant was accepted, the remedies and rights of the parties should be worked out under the scheme of the Act.

15. A salutary and simple test to apply in determining whether the previous decision operates as res judicata or on principles analogous thereto is to find out whether the first court, here the Revenue Court could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so there was no res judicata. The subsequent civil suit was not barred by res judicata.

16. In that view of the matter, we are of the opinion that the High Court of Punjab and Haryana was right in holding that there was no res judicata so far as the second suit based on the assertion of the title of the respondent was concerned. The appeals must, therefore, fail and are accordingly dismissed with costs.

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