PUNJAB AND HARYANA HIGH COURT

Sada Ram

Vs

Gajjan

L.P.A. No. 4 of 1964

(Mehar Singh, C. J. and Bal Raj Tuli, J.)

12.11.1969

JUDGMENT

Bal Raj Tuli, J.

1. This judgment will dispose of L. P. A. 4 of 1964 Sada Ram and others v. Gajjan and L. P. A. 5 of 1964 Bhagat Ram v. Gajjan, as they have been directed against the same judgment of the learned Single judge.

2. The facts are that Gajjan, respondent, filed two suits, one against Dhani Ram and others and the other against Bhagat Ram, for possession of the land mentioned in each suit. That land was inherited by Smt. Malaro after the death of her husband, Hazari, in 1933-34. The appellants in these appeals, who were defendants in the two suits, were reversioners of Hazari and cultivated the land. After the enforcement of the Hindu Succession Act, 1956. Smt. Malaro made a gift of the land in dispute in favour of Gajjan, plaintiff -respondent. In the plaints it was alleged that the defendants (appellants) cultivated the land as tenants under Smt. Malaro and paid her some grain and a certain fixed sum of money by way of rent, that after the enforcement of the Hindu Succession Act, Smt. Malaro became absolute owner and made a gift of the property to the plaintiff who asked the defendants to accept him as the landlord and pay the rent to him but the defendants refused to do so and claimed ownership in themselves. For this reason, it was stated that the defendants had forfeited their right, as tenants of the land and the plaintiff was entitled to the possession thereof after ejecting them. In the written statements filed in both the cases, the defendants denied that they were ever tenants under Smt. Malaro. Their plea was that Smt Malaro surrendered the entire estate inherited by her from her husband in their favour, and, in return, they gave her some money and some grain by way of maintenance and not by way of rent. They also asserted that smt. Malaro did not become an absolute owner of the land because she was not in possession thereof on the date of Hindu Succession Act came into force and the plaintiff had no right to claim any rent or possession of the land from them. Lastly. they pleaded that in any case they had become owners by adverse possession. In the suit against Dhani Ram and others it was also stated in paragraph 4 as follows :-

"The possession of the defendants is with the consent, and permission of Smt. Malaro and

they have been paying the share of the harvests to her and are ready to do so, and for this reason, the suit is triable only by a revenue Court. The defendants are all ready to give the grains at all times."

3. On the pleadings of the parties the following issues were settled in the suit against Bhagat Ram :-

(1) Whether Smt. Malaro surrendered her estate in favour of her next reversioners, including the defendant ? If so, when and to what effect ?

(2) If issue No. 1 is not proved, whether the defendant is a tenant under the plaintiff ?

(3) Whether Smt. Malaro was not competent to make gift of the property in suit in favour of the plaintiff ?

(4) Whether the suit is time-barred ?

(5) Whether the defendant has acquired title by adverse possession ?

(6) If issue No. 2 is proved, whether this Court has the jurisdiction to try this suit?

4. The evidence was mainly led in the suit against Bhagat Ram and that evidence was agreed by the parties to be read in the other case also in addition to the witnesses examined in that case. The trial Court came to the conclusion that there was no surrender of the estate, that the defendants were tenants under Smt Malaro, that she was competent to make the gift and that no title had been acquired by the defendants by way of adverse possession. The trial Court further concluded that the defendants had forfeited their right as tenants by denial of the title of the landlord and setting up the title in themselves. Consequently, a decree for possession of the land was passed in favour of the plaintiff in each case. The findings of the trial Court were confirmed by the learned Senior Subordinate Judge, Kangra, in appeal and against the decrees passed by the learned Senior Subordinate Judge, the defendants filed two appeals in this Court which were dismissed by the learned Single Judge on September 12, 1963. The learned Single Judge however, granted leave to the appellants to file appeals under clause 10 of the Letters Patent and these appeals have been filed in pursuance thereof.

5. The only point that was argued before the learned Single Judge was whether by denying the title of the landlord and setting up a title in themselves in the written statements filed in the suits, the defendants had forfeited their tenancy and were, therefore liable to be ejected This point was decided against them by the learned Single Judge. Before us the same point has been argued and the learned counsel has placed his reliance on a judgment of their Lordships of the Privy Council in *Maharaja of Jeypore v. Rukmani Pattamahdevi*[1], wherein it was held that denial in the suit will not work a forfeiture of which advantage can be taken in that suit, because the forfeiture must have accrued before the suit was instituted. This judgment was followed by a Full Bench of the Lahore High Court in *Mussammat Gindori v. Sham Lal alias Maman Mal and another*[2], The main judgment in that case was delivered by Din Mohammad J. The learned Judge, noticed that there were a number of reported judgments of various High Courts of this country in which it had been held that a denial of the relationship of landlord and tenants by the tenant in a suit filed

against him by the landlord worked as forfeiture of his tenancy. But in view of the judgment of their Lordships of the Privy Council in the case of Maharaja of Joepore (supra), the learned judge came to the conclusion that the disclaimer of the landlord's title by a tenant does not work a forfeiture of tenancy unless there has been such a disclaimer in clear and unmistakable terms prior to the institution of the suit by matter of record as the term is understood in English law. This rule of law was stated to apply to the territories to which the provisions of sections 111 to 116 of the Transfer of Property Act, 1882, do not apply in terms.

6. The binding nature of the two judgments referred to above has been taken away by the judgment of their Lordships of the Supreme Court in *Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur and another*[3], wherein it was held

> "No doubt the provisions of the Transfer of Property Act were not it is stated in terms, applicable to the area in question, but it has been laid down that the principles embodied in section 111(g) are equally applicable to tenancies to which the Act does not apply on the ground of the same being in consonance with justice, equity and good conscience."

In paragraph 15 of the report, their Lordships further observed :-

> "We consider the law to be that unless there is a disclaimer or renunciation in clear and unequivocal terms, whether the same be in a pleading or in other documents, no forfeiture is incurred.

From this observation it is clear that a disclaimer or renunciation in clear and unequivocal terms, in the written statement to the suit can also result in the forfeiture of the tenancy The argument of the learned counsel for the appellants that the denial of the tenancy in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord, does not appeal to us. It will lead to unnecessary multiplicity of legal proceedings if the landlord is obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entailed by his denial of his character a as a tenant in the written statement and not allowed to avail of that plea in the suit in which the written statement has been filed especially when it has been pleaded in the plaint that the defendant had denied his character as a tenant of the plaintiff orally before the institution of the suit as was pleaded in the two suits out of which the present appeals have arisen.

7. The relevant portion of section 111(g) of the Transfer of Property Act reads as under :

> "a lease of immovable property would be determined by forfeiture in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself."

According to this section it is not necessary that the renunciation of the character as lessee should be in writing before the institution of the suit. It is correct that no cause of action will accrue to the landlord to eject the tenant on the ground of forfeiture of tenancy unless the forfeiture had taken place prior to the institution of the suit. That renunciation can be either in writing or verbal as has been mentioned in Paragraph 1391 at page 666 of Volume 23 of Halsbury's Laws of England, Third Edition. The material portion of that paragraph reads as follows :

> "There is implied in every lease a condition that the tenant shall not do anything that may prejudice the title of the landlord; and that if this is done, the landlord may re-enter for breach of this implied condition. Thus it is a cause of forfeiture if the tenant denies the title of the landlord by alleging in writing or, in the case of a tenancy from year to year, either in writing or verbally that the title to the land is in himself or another; or if he assists a stranger to set up an adverse title, as where he acknowledges the freehold title to be in him or delivers the premises to him in order to enable him to set up a title. In the case of a tenancy from year to year, the effect of such denial of title is that the tenancy may be forthwith determined by the landlord without notice to quit."

8. The, matter can be looked at from another angle. When the tenant denies his character as the tenant of the landlord in his written statement, he can be taken to be putting an end to the tenancy, thus giving right to the landlord to claim- possession from him. This principle is expressed thus in platt on Leases :-

> "The holding being from year to year subject to the mutual will of landlord and tenant to determine it on giving the usual 6 months notice evidence of a disclaimer..... is evidence of an election to put an end to the tenancy and supersede the necessity for such notice. Hence verbal or written denials of a tenancy have rendered a notice to quit unnecessary, but it does not appear that they have effected a forfeiture of the term."

The denial of the relationship of landlord and tenant by the tenant in his written statement to a suit for ejectment determines a tenancy forthwith, thus giving the right to the landlord to the possession of the leased property, when the lease is not for a fixed period but from year to year or at will as in the present cases. A year to year tenancy or a tenancy at will gets determined by such a denial or renunciation of title. It was asserted in the plaints that the defendants had denied the title of Smt. Malaro and had also refused to make any payment of rent to her or to the plaintiff This assertion was not denied in the written statements. On the other hand, the defendants asserted that Smt. Malaro was not the owner and they were in possession in their own right and whatever they have been paying to her was merely by way of maintenance and not by way of rent etc. From this assertion in the written statements it is clear. that they had denied the title of Smt. Malaro and the, plaintiff as their landlord before, the institution of the suit and had set up an adverse title in themselves in clear and unequivocal terms. In view of these pleadings of the parties, the defendants had clearly forfeited their tenancy which entitled the plaintiff obtain possession of the lands from them by means of the suits which he filed. The judgment of the learned Single judge, is, therefore, correct and we have not been persuaded by learned counsel for the appellants to take a different view. It is not disputed by the learned counsel for the appellants that if section 111(g) of the Transfer of Property Act were applicable to the State of Punjab, the denial of the character as tenants by the defendants in their written statements would have entailed forfeiture entitling the plaintiff-respondent to the decrees of possession against the defendants all were prayed for by him.

9. For the reasons given above, there is no merit in these appeals which are dismissed with costs.

Mehar Singh, C.J.

10. I agree.

Appeals dismissed.

Cases Referred.

1AIR 1919 P.C
2ILR 1947 Lah 235
3AIR 1965 SC 1923