

SANWAT SINGH
v.
ZAIL SINGH AND ORS.

DECEMBER 17, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Punjab Security of Land Tenures Act, 1953 : Section 9.

Pre-emption—D, owner of property—Property sold to J—Z obtained a decree of pre-emption and interfered with possession of appellant who was in possession of property—Suit filed by appellant for perpetual injunction restraining Z from interfering with possession—Trial Court found that appellant was in possession prior to 1957 and granted decree accordingly—Appellate Court reversed the decree—Decree Affirmed by High Court in second appeal—Appeal before Supreme Court—Held a tenant in possession of the demised property by the vendor is not liable to ejection except in accordance with the provisions contained in Section 9—It is not the case of appellant that he has contravened any of the provisions and is liable to be ejected—Even otherwise, if his case is that he has contravened any of the provisions, unless appropriate action in accordance with law is taken and order passed, he is entitled to resist unlawful interference with the possession—Thereby, the decree granted by the appellate Court and confirmed by the High Court is not correct in law.

Hukam Singh v. Hakumat Raj, (1967) PLR 743, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 922 of 1986.

From the Judgment and Order dated 16.11.86 of the Punjab & Haryana High Court in R.S.A. No. 848 of 1977.

Prem Malhotra for the Appellant.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Punjab & Haryana High Court, made on 16.11.1986 in RSA No. 848/77.

A The admitted and proved facts are that one Dalip Kaur daughter of Inder Singh was the owner of the property in question. She sold the property on April 14, 1967 to Smt. Jeth Kanwar. Zail Singh had filed a suit for pre-emption of the sale and obtained a decree of pre-emption on October 9, 1969. Thereafter, he sought to interfere with the possession of the appellant who was admittedly in possession of the said property.

B Therefore, the appellant filed the suit in question for perpetual injunction restraining Zail Singh and any other person from interfering with his possession. He claimed to be a tenant prior to 1957 from Dalip Kaur and was, therefore, entitled to remain in possession uninterruptedly as such.

C The trial Court found that he was in possession as a tenant prior to 1957 and accordingly granted the decree of perpetual injunction against the respondents. On appeal, the appellant Court reversed the decree holding that the appellant had come into possession of the suit property some time in 1968 after the sale was made in favour of Jeet Kanwar. Since Dalip Kaur had pre-empted the property sold by her mother, the tenancy right created by Jeet Singh in favour of the appellant did not bind Jeet Singh-defendant.

D Having obtained the pre-emption, he had right to take physical possession of the property dispossessing the appellant. As a consequence, the injunction was not correct in law. That was affirmed by the High Court in the second appeal following the ratio of the judgment of the Full Bench of the High Court in *Hukam Singh v. Hakumat Rai*, (1967) PLR 743.

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Mr. Prem Malhotra, learned counsel appearing for the appellant, contends that even accepting the finding of the appellate Court, without conceding that he was not a tenant prior to 1957, the findings recorded by the appellate Court are unsustainable in law and the application of the judgment of the Full Bench to the facts in this case is not warranted.

F Therefore, the decree of the trial Court is correct in law. In support thereof, he relied upon proposition Nos. (i), (ii) and (iv) laid in the judgment of the Full Bench which read as under :

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(i) The title of a pre-emptor in respect of the pre-empted property accrues from the date on which payment of the purchase money and costs (if any) is made by him in accordance with the provisions of Order XX, rule 12 of the Code of Civil Procedure;

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(ii) On such title accruing to him the pre-emptor is entitled to delivery of possession of the property in question from the vendee

including any person who has happened to possess the property through the vendee after the original sale; A

(iv) a tenant inducted into pre-emptible property by a vendee after its sale in his favour does not become the tenant of the pre-emptor after title to the property passes to the latter by devolution of interest; as the vendee is not the predecessor-in-interest of the pre-emptor;" B

Though notice has been served on the respondent, they are not appearing either in person or through counsel. Having considered the contention raised by the learned counsel for the appellant, we find that there is force in the same. It is seen that Proposition No. (i) lays that the title of the pre-emptor in respect of the pre-empted property accrues from the date on which payment of the purchase money and the costs, if any, is made by him in accordance with the provisions of Order XX Rule 14, CPC. In other words, he acquires the title only from the date of the deposit of the pre-emption money and the costs, if any, into the Court. Proposition No. (ii) envisages that the pre-emptor is entitled to delivery of possession of the property in question from the vendee including any person who happened to possess the property through the vendee after the original sale. Proposition No. (iv) provides that a tenant inducted into pre-emptible property by a vendee after its sale in his favour does not become the tenant of the pre-emptor, after the title to the property passes to the latter by devolution of interest, as the vendee is not the predecessor-in-interest, of the pre-emptor. It is seen that since he acquired the title to the property only after the purchase money was deposited into the Court, the natural consequence would be that any tenancy rights of any person created by the predecessor vendee or possessory right given by the vendor binds the vendee and to the ... or person in lawful possession. It is seen that the Punjab Tenancy Act, 1887 defines a tenant to mean a person who holds the land under another person and is, or but for a special contract, would be, liable to pay rent for that land to that other person. In other words, a tenant who is holding a land under the vendor is a tenant within the meaning of Punjab Tenancy Act. Section 9 of the Punjab Security of Land Tenures Act, 1953 specifically bars ejection of a tenant except under certain conditions. Conditions enumerated are as under :

"Notwithstanding anything contained in any other law for the time H

A being in force, no land owner shall be competent to eject a tenant except when such tenant -

(i) is a tenant on the area reserved under this Act or is a tenant of a small landlord; or

B (ii) fails to pay rent regularly without sufficient cause; or

(iii) is in arrears of rent at the commencement of this Act; or

C (iv) has failed, or fails without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situated; or

(v) has used or use the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose of which he holds it; or

D (vi) has sublet the tenancy or a part thereof provided that where only a part of the tenancy has been sublet;

the tenant shall be liable to be ejected only from such part".

E In other words, notwithstanding anything contained in any other law for the time being in force, including the law relating to prescription, a tenant in possession of a demised property by the vendor is not liable to ejection except in accordance with the provisions contained in Section 9 of the Punjab Security of Land Tenures Act, 1953. It is not his case that

F he has contravened any of the provisions and is liable to be ejected. Even otherwise, if his case is that he has contravened any of the provisions, unless appropriate action in accordance with law is taken and order passed, he is entitled to resist unlawful interference with the possession. Thereby, the decree granted by the appellate Court and confirmed by the High Court is not correct in law.

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The appeal is accordingly allowed. The Judgement and decree of the High Court and of the appellate Court stand set aside and that of the trial Court stands restored. No costs.