MUNSHI & ORS.

v.

RICHPAL & ORS.

February 17, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

Pepsu Tenancy and Agricultural Lands Act, 1955—*Ss.* 7 *and* 7*A*—*Scope of.*

Section 7 of the Pepsu Tenancy and Agricultural Lands Act, 1955, which deals with termination of tenancy, provides that no tenancy shall be terminated except on any of the grounds mentioned in the section. Section 7 gives additional grounds for termination of tenancy in certain cases.

Respondent no. 2 sold his land to the appellants. Claiming that he was a non-occupancy tenant under respondent no. 2, respondent no. 1 filed a suit for possession of the land by pre-emption. The trial Court decreed the suit in favour of the plaintiff-pre-emptor holding that he had been a tenant-at-will on the date of the sale and that he was forcibly dispossessed after the sale.

The District Judge as well as the High Court upheld the trial Court's decision.

It was contended on behalf of the appellants that the pre-emptor had to prove his subsisting right of pre-emption on the date of sale, date of institution of the suit and date of passing of the decree and since the plaintiff had failed to file a suit for recovery of possession under s. 50 of the Punjab Tenancy Act, 1887 his right and title had been extinguished.

Dismissing the appeal,

HELD : The plaintiff cannot but be deemed to be the tenant of the suit land on the date of sale as well as on all other material dates and is thus fully qualified and entitled to pre-empt the land. [5H]

The point now sought to be raised was not raised by the appellant in the Courts below. In view of the provisions of ss. 7 and 7A of the Pepsu Tenancy and Agricultural Lands Act, 1955, which have an over-riding effect and the decision of this Court in *Rikki Ram & Anr* v. *Ram Kumar & Ors* [1975] 2 SCC 318 it cannot be disputed that an order or decree directing eviction of a tenant is necessary to be obtained to bring about a determination of the tenancy. *A fortiori*, the person who has been in possession of the land with the right to possess it continues to hold the land and be a tenant in spite of having been wrongfully put out of possession specially if he has initiated proceedings for recovery of possession. [3E & 5F]

Since in the instant case, it has been concurrently found by the Courts below that the plaintiff-pre-emptor was a tenant of the suit land on the date of sale and it has not been alleged that his tenancy was thereafter determined or terminated on any of the grounds set out in ss. 7 and 7A of the Act and the plaintiff had applied to the Tehsildar for restoration of possession, he could not but be deemed to be a tenant of the suit land on the date of the sale as well as on all other material dates and thus fully qualified and entitled to pre-empt the land. [5G]

Rikki Ram & Anr. v. *Ram Kumar & Ors.* [1975] 2 S.C.C. 318 followed.

Bhagwan Das v. *Chet Ram* [1971] 2 S.C.R. 640 and *Dindyal & Anr.* v. *Rajaram* [1971] 1 S.C.R. 298 referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2054/69.

(Appeal by Special Leave from the Judgment and Order dated the 5-8-1969 of the Punjab and Haryana High Court in Regular Second Appeal No. 983 of 1969).

V. C. Mahajan, Mrs. Urmila Kapoor and *Miss Kamlesh Bansal,* for the appellants.

B

Ram Sarup and *R. A. Gupta,* for respondent No. 1.

The Judgment of the Court was delivered by

JASWANT SINGH, J. This appeal by special leave which is directed against the judgment and order dated September 24, 1969, of the High Court of Punjab and Haryana at Chandigarh, passed in R.S.A. No. C 983 of 1969 arises in the following circumstances :—

Bhawani Dass, respondent No. 2 herein, who owned agricultural land measuring 50 kanals and 6 marlas comprised in Khewat No. 223, Khatauni No. 467-468, situate in village Kohlawas, Tehsil Dadri, District Mohindergarh, sold the same to Munshi, Dina and Rani Dutt, appellants before us, in lieu of Rs. 10,000/- by means of registered D sale deed (Ext. D-1) dated October 17, 1966. Alleging that he held as a non-occupancy tenant under Bhawani Dass the aforementioned land on the date of its sale to the appellants and had continued to do so and as such had a preferential right of its purchase under clause Fourthly of section 15(1)(a) of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913) which still applies to the State of Haryana, Richpal, respondent No. 1 herein, brought a suit on October 17, 1967 E for possession of the said land by pre-emption, in the Court of the Sub-Judge, Charkhi Dadri. The suit was resisted by the appellants contending *inter alia* that the plaintiff-respondent was neither a non-occupancy tenant of the land in question under Bhawani Dass, vendor, nor was he in possession of the land either on the day of the aforesaid sale or on the day of the institution of the suit. After settling the necessary issues and recording the evidence adduced by the parties, the F trial court by its judgment dated February 1, 1969, decreed the suit in favour of the plaintiff-pre-emptor on payment of Rs. 10,000/- (the consideration of the aforesaid sale) plus Rs. 727/- (the costs incurred by the vendees-appellants on the stamps, registration fee etc.) holding that he had been a tenant-at-will under the vendor from Kharif, 1957 to Rabi, 1968; that he was forcibly dispossessed after the sale; that wrongful eviction of a tenant could be of no consequence in the eye G of law; that the plaintiff-pre-emptor continued to hold his rights as a tenant, including the right to immediate possession and cultivation of the land notwithstanding his wrongful ouster therefrom by the vendees, who could not be allowed to take advantage of their own wrongs and the former must be deemed to continue in legal possession of the land which was comprised in his tenancy under the vendor on the date of the sale right upto the date of the suit and the date of the decree of H the trial court in his favour. The trial court further held that 'a tenant's eviction can only be had under sections 7 and 7A of the Pepsu Tenancy and Agricultural Lands Act, 1955, and there is nothing on the record of the case to even insinuate that the plaintiff's tenancy

which subsisted at the time of the impugned sale was ever determined or terminated under section 7 or 7A of the Act and the plaintiff who was in physical possession of the land in suit as a tenant at the time of the sale has to be taken to be in legal possession up till the present moment'. In conclusion, the trial could held that the mere act of forcible dispossession of the plaintiff-pre-emptor at the hands of the vendees after the sale could not have the effect of divesting him of his right to hold the land which he had acquired as a tenant of the vendor and in the eye of law he must be presumed to have continued to be a tenant all along and as such had a preferential right of pre-emption. The judgment and decree passed by the trial court was affirmed in appeal not only by the Additional District Judge, Gurgaon, but also by a learned Single Judge and Letters Patent Bench of the High Court. Aggrieved by these decisions, the vendees-appellants have, as already stated, come up in further appeal to this Court.

The sole point that has been urged before us on behalf of the appellants is that as according to the decision of this Court in *Bhagwan Das v. Chet Ram*(1) the plaintiff-pre-emptor has to prove his subsisting right of pre-emption on all the three material dates *viz.*(1) the date of sale, (2) the date of institution of the suit and (3) the date of passing of the decree and in the instant case, he failed to file a suit in the revenue court for recovery of possession of the suit land within one year of the date of his dispossession as contemplated by section 50 of the Punjab Tenancy Act 1887 not only his remedy was destroyed but his right and title was also extinguished at the expiry of that period on the general principles underlying section 27 of the Limitation Act, 1963, which may not in terms be applicable to the present case. Though the learned counsel for the appellants cited a few cases in support of his contention but did not unfortunately bring to our notice the decision of this Court in *Dindyal & Anr. v. Raja-Ram*(2) which may in an appropriate case require reconsideration by a larger bench of this Court, we think, he cannot be allowed canvass the aforesaid point. A reference to the record of the case shows that the point now sought to be agitated before us was not raised by the appellants either in their written statement or in the grounds of the three appeals preferred by them before the courts below. All that appears from the record to have been urged by them in the grounds of the aforesaid appeals was that the evidence had not been properly appraised and that in the absence of any lease deed in his favour or any receipt evidencing payment of rent by him to the vendor, mere entries in the khasra girdawaries were not enough to establish that the plaintiff-pre-emptor was a tenant of the suit land under the vendor at the time of the sale. The suit land being situate in the district of Mohindergarh which formed part of the territories of the erstwhile of Pepsu, the case, as rightly observed by the court of first instance, was governed by sections 7 and 7A of the Pepsu Tenancy and Agricultural Lands Act, 1955, which in view of section 4 of that Act have an overriding effect and provide as under :—

"4. Act to over ride other laws—Save, as otherwise expressly provided in this Act, the provisions of this Act

(1) [1971] 2 S.C.R. 640.
(2) [1971] 1 S.C.R. 298.

A shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law or any usage, agreement, settlement, grant, sanad or any decree or order of any court or other authority.

7. Termination of tenancy.—(1) No tenancy shall be terminated except in accordance with the provisions of this B Act or except of any of the following grounds, namely :—

(a) ....

(b) that the tenant has failed to pay rent within a period of six months after it falls due;

Provided that no tenant shall be ejected under this clause C unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he had failed to pay such arrears during that period;

(c) that the tenant, not being a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land D by reason of physical or mental infirmity has after commencement of the President's Act sublet without the consent in writing of the landowner, the land comprising his tenancy or any part thereof;

(d) that the tenant has, without sufficient cause, failed to cultivate personally such land in the manner and E to the extent customary in the locality in which such land is situated;

(e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him;

(f) that the tenant, on demand in writing by the landowner, has refused to execute a kabuliyat agreeing F to pay rent in respect of his tenancy in accordance with the provisions of sections 9 and 10.

(2) ....

7A. Additional grounds for termination of tenancy in certain cases.—(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of G the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in section 7, namely :—

(a) that the land comprising the tenancy has been reserved by the land-owner for his personal cultivation in accordance with the provisions of Chapter II;

H (b) that the landowner owns thirty standard acres or less of land and the land falls within the permissible limit;

Provided that no tenant shall be ejected under this sub-section— A

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres,

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standards acres, B

until he is allowed by the State Government alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same land-owner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1)— C

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standards acres, or

(b) from an area of fifteen standards acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres; D

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity. E

Explanation.—In computing the period of twelve years, the period during which any land has been held under the same land-owner or his predecessor in title by the father, brother or son of the tenant shall be included.

F

(3) For the purpose of computing under sub-sections (1) and (2) the area of land under the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included."

It cannot, in view of the above noted provisions of law and the decision of this Court in *Rikh Ram & Anr.* v. *Ram Kumar & Ors.*(1) be disputed that an order or decree directing eviction of a tenant is necessary to be obtained to bring about a determination of the tenancy. *A fortiori,* a person who has been in possession of land with the right to possess it continues to hold the land and to be a tenant in spite of having been wrongfully put out of possession especially if he has initiated proceedings for recovery of possession. As in the instant case, it has been concurrently found by all the courts below that the plaintiff-pre-emptor was a tenant of the suit land on the date of sale G H

(1) [1975] 2 S.C.C. 318.

A and it has not been alleged much less proved that his tenancy was thereafter determined or terminated on any of the grounds set out in sections 7 and 7A of the Pepsu Tenancy and Agricultural Lands Act, 1955 and he had admittedly applied to the Tehsildar for restoration of his possession, he cannot but be deemed to be a tenant of the suit land on the date of the sale as well as on all other material dates and thus fully qualified and entitled to pre-empt the land. We must
B fairly state that our judgment is based on the provisions of law brought to our notice by counsel and our conclusion is confined to the interpretation of the Acts referred to above.

For the foregoing reasons, we do not find any merit in this appeal which is dismissed. In the circumstances of the case, we leave the parties to bear their own costs of this appeal.

C

P.B.R. *Appeal dismissed.*