

Waryam Singh and others *v.* Financial Commissioner etc.
(S. S. Kang, J.)

(18) In view of discussion above the appeal must succeed and consequently the impugned order of the learned trial Court dismissing the petition against Bhagwanti respondent is set aside and the appellant is granted a decree of restitution of conjugal rights against her. The order of dismissal of the petition against Smt. Leelo respondent is maintained. No order as to costs.

N. K. S.

Before Sukhdev Singh Kang, J.

WARYAM SINGH and others,—*Petitioners.*

versus

FINANCIAL COMMISSIONER ETC.,—*Respondents.*

Civil Writ Petition No. 3027 of 1978.

November 9, 1979.

Punjab Security of Land Tenures Act (X of 1953)—Sections 9(1) (f) and 14-A—Punjab Security of Land Tenures Rules 1953—Rule 11—Punjab Tenancy Act (XVI of 1887)—Section 86—Application for ejectment of a tenant—Prescribed form signed by one of the heirs of the deceased land-owner for self and as general attorney of others—Such application—Whether maintainable—Signatures of all the land-owners—Whether necessary.

Held, that the grounds of ejectment of tenants under the Punjab Security of Land Tenures Act, 1953 are prescribed in section 9 and section 14-A lays down the procedure for the trial of ejectment applications. These sections do not in terms provide that the ejectment application shall be signed by all the land-owners. The terms and language of form K-1 also do not require that the application should be signed by all the land-owners. A combined reading of rule 11 of the Punjab Security of Land Tenures Rules 1953 and sub-sections (1) and (2) of section 86 of the Punjab Tenancy Act 1887 makes it abundantly clear that the persons holding general power of attorney were declared to be recognised agents for the purpose of section 86(4). Such persons were competent to file applications and do acts before the Revenue Officers like the parties themselves. These recognised agents were authorised to file the ejectment petitions and to do all acts in relation to such applications which their principals

could do. Rule 11 makes the provisions of section 85 of the Tenancy Act and the rules framed thereunder applicable to the ejection applications filed under the Act. Rule 2 of the Rules framed under section 85 provides that ejection applications have to be verified in the manner provided by the Code of Civil Procedure for written statements in suits. Order 6, Rule 15 of the Code is, therefore, made applicable to the pleadings in the ejection applications under the Act and therefore the ejection applications can be verified by one of the land-owners. All of them are not required to verify the same. Thus, the ejection application if signed by one of the land-owners on his own behalf and as general attorney of others is competent.

(Para 7).

Petition under Articles 226/227 of the Constitution of India praying that :—

(i) the records of the case be summoned for the disposal of this writ petition ;

(ii) a writ of certiorari quashing the impugned orders of respondents Nos. 1 to 3 dated 17th June, 1977, 31st March 1976 and 25th May, 1973 (Annexures P-6, P-5 and P-2, respectively) be issued :

(iii) any other suitable writ, direction or order as this Hon' Court deem just and proper in the circumstances of the case be also issued ; and

(iv) costs of the writ petition be also awarded.

Ram Rang, Advocate, for the Petitioners.

N. C. Jain, Advocate, for Nos. 4 and 5.

Nemp, for others.

JUDGMENT

Sukhdev Singh Kank, J.

(1) Civil Writ Petitions Nos. 3027 and 3028 of 1978 raise the common questions of law and fact and, therefore, they will be disposed of by this judgment.

(2) The facts of Civil Writ Petition No. 3027 of 1978 are reproduced for a proper appreciation of the points raised in these writ petitions.

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(3) Sultan Singh, father of Waryam Singh, Raghbir Singh, Parmodh Singh and Baldev Singh, the present petitioners, had been allotted land in village Hijranwan Khurd, Tehsil Fatehabad, District Hissar. He was a small land-owner. On his death, the petitioners inherited this land measuring about 25 acres. It was mutated in their names. The petitioners are small land-owners.

(4) Raghbir Singh, Parmodh Singh, petitioners, are employed in the Army. Waryam Singh, petitioner, is an ex-serviceman, and he resides in Sube-Chak, Tehsil Hira Nagar, District Kathua (J. & K.). These three petitioners executed a general power of attorney in favour of their fourth brother, namely Baldev Singh, petitioner. They authorised him to initiate ejectment proceedings in the competent court against their tenants. Clause (3) of the power of attorney, which has been appended to this petition reads as under :

“To eject any tenant or tenants from a part or whole of land mentioned above, initiate proceedings in the courts concerned, engage lawyer, adduce statements, sign documents, file affidavits, and obtain and produce record before the court concerning the said land and house, get decree, execute the same through concerned department or with the help of police as the case may be and take possession of the land from tenant or tenants.”

On the authority of this power of attorney Baldev Singh, petitioner, made an application on Form K-1, prescribed by the Punjab Security of Land Tenures Rules, 1956 (hereinafter called ‘the Rules’) framed under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), read with section 9(1)(i) of the Act for ejectment of Chamba Ram and Ganda Ram, respondents Nos. 4 and 5, who are tenants under the petitioners on 53 *kanals* and 16 *marlas* of land. In the application, it was mentioned that the petitioners are small land-owners and the land is in possession of the tenants. Column I of Form K-1 requires full name, parentage and address of the applicant/applicants to be mentioned therein. The petitioners scribed in that column are: “Waryam Singh, Raghbir Singh, Baldev Singh and Parmodh Singh, sons of Sultan Singh, son of Partap Singh through Baldev Singh for self and as Mukhtiar-i-am of petitioners Nos. 1, 2 and 4 and residents of Sube-Chak, Tehsil Hira Nagar, District Kathua (J. & K).” Beneath the place meant for signatures on the form K-1, Baldev Singh signed. The other petitioners had not

signed there. The power of attorney was in favour of Baldev Singh and put on the record along with the application on form K-1. Both the parties went to trial. They led evidence. On behalf of the petitioner, statements of the Patwari and Baldev Singh, petitioner, were recorded. It was stated by them that the land in dispute was the entire land owned by the petitioners in the States of Punjab and Haryana and they were small land-owners. However, the Assistant Collector relying on a decision of the Financial Commissioner in *Atma Ram versus Smt. Saini Bai*, (1), dismissed the ejectment application on the ground that it was signed by Baldev Singh alone and not by all the land-owners. Aggrieved by this order, the petitioners filed an appeal before the Collector, Hissar. They relied on a decision of Shri M. L. Batra, Financial Commissioner, Haryana, dated the 18th January, 1971, wherein he had taken a contrary view and had held that the ejectment application if signed by one of the land-owners on his own behalf and as general attorney of the other land-owners was competent. The Collector accepted the contentions of the petitioners and allowed the appeal and set aside the order of the Assistant Collector. The tenant-respondent No. 4 filed an appeal before the Commissioner. He accepted the same and set aside the order of the Collector dated 24th December, 1973. He did not take into account column No. 1 of the application on Form K-1 and erroneously held that since Baldev Singh signed on his own behalf and not on behalf of his brothers, the application was not maintainable. He also relied on a decision of the Financial Commissioner in *Fauja Singh v. Mohinder Singh and others*, (2). Dissatisfied with this order, the petitioners filed a revision petition before the Financial Commissioner, who rejected the same on 17th June, 1977, and upheld the order of the Commissioner. Aggrieved by these orders, the petitioners have filed the present petitions.

(5) The facts in Civil Writ Petition No. 3028 of 1978 are also similar. The only difference is that the tenant in that case is Nidhan Singh.

(6) Mr Ram Rang, the learned counsel for the petitioners, has argued that the Financial Commissioner, Haryana, has dismissed the revision petition illegally, holding that the ejectment application

(1) 1967 P.L.J. 289.

(2) 1975 P.L.J. 334.

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should have been signed by all the petitioners because it was necessary that the solemn affirmation in the application in Form K-1 should be signed by all the applicants themselves. He also erroneously held that the general power of attorney is for the purpose of initiating and following up proceedings relating to ejectment. It does not include making solemn affirmation or declaration regarding the property of the principals. It was essential that such declarations or affirmations be signed by the land-owners themselves and they could not be signed by the attorneys on behalf of their principals even if they happened to be brothers or co-sharers. For these conclusions he mainly relied on the two decisions of the Financial Commissioner in *Atma Ram's case* and *Fauja Singh's case* (supra). It is contended on behalf of the petitioners that these two decisions do not lay down correct law and are also distinguishable on facts. In *Atma Ram's case* (supra), the application had not been filed by the land-owner but by her son. In these circumstances, it was held that he was not a competent person to sign on behalf of the owner and could not declare himself to be a small land-owner. The Financial Commissioner did not consider the relevant statutory provisions of the Punjab Security of Land Tenures Act, Punjab Security of Land Tenures Rules and Punjab Tenancy Act nor were the same brought to his notice. On facts also, he held that the land-owner was a big land-owner and the applicant did not give the necessary particulars. In *Fauja Singh's case* (supra), the applicant had mis-incorporated the relevant provisions of law. In order to fully appreciate the contentions of the learned counsel, it will be useful to extract the relevant statutory provisions at this stage. Section 14-A of the Act reads as under:

“Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A.

- (i) a land-owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of section 10 of this Act, and the provisions of sub-section (1) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation, and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XIV of 1887), shall not be affected ;

- (ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in subsection (2) of section 10 of the Act, the Assistant Collector finds that tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the land-owner in possession of the land concerned ;
- (iii) (a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact ;
- (b) on receiving such application the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both within 60 days of the receipt of the notice."

Rule 11 of the Punjab Security of Land Tenures Rules, 1953, reads as under :—

"The procedure of Revenue Officers in matters under the Punjab Security of Land Tenures Act, 1953, and these rules for which a procedure is not prescribed thereby, shall be regulated, as far as may be, by the procedure prescribed for Revenue Officers by the provisions of the Punjab Tenancy Act, 1887, and the rules thereunder."

The relevant provisions of section 86 of the Punjab Tenancy Act are given below :—

"(1) Appearances before a Revenue Officer as such, and applications to and acts to be done before him, under this Act may be made or done ...

(a) by the parties themselves, or

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(b) by their recognised agents or a legal practitioner ;

Provided that the employment of a recognised agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognised agents shall be persons as the State Government may by notification declare in this behalf.

(3) ”

(7) The grounds for ejection of tenants under the Act are prescribed in section 9 of the Act. Section 14-A lays down the procedure for the trial of ejection applications. These sections do not in term provide that the ejection application shall be signed by all the land-owners. The terms and language of Form K-1 also do not require that the application should be signed by all the land-owners. By Rule 11, it has been provided that the procedure of the revenue officers in matters under the Act shall be regulated in accordance with the procedure prescribed by the Punjab Tenancy Act. The rules do not prescribe any procedure, the signing, filing and trial of the ejection applications. So, the procedure provided by section 86 of the Punjab Tenancy Act is applicable to the ejection applications, filed under the Act. Under sub-section (1) of section 86, recognised agents had been authorised to file applications and do acts which the parties themselves could do. In exercise of the powers conferred by section 86(2) of the Punjab Tenancy Act, the Governor of Punjab issued a notification No. P.G. Not. No. 728, dated 1st November, 1887, which reads as under :—

“In exercise of the powers conferred by section 86(2) of the Punjab Tenancy Act, the Hon'ble Lieutenant Governor is pleased to declare, and hereby declares that the following persons shall be recognised agents for the purposes of section 86(1) of the same Act, viz.;

(a) Persons holding general power of attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, authorising them to make and do

such appearances, application and acts on behalf of such parties.

... ..
”

A combined reading of Rule 11 of the Rules and sub-section (1) and (2) of section 86 of the Punjab Tenancy Act and notification dated 1st November, 1887 make it abundantly clear that the persons holding general power of attorney were declared to be recognised agents for the purpose of section 86(1). Such persons were competent to file applications and do acts before the revenue officers like the parties themselves. These recognized agents were authorised to file the ejectment petitions and to do all acts in relation to such applications which their principals could do. Rule 11, *ibid*, makes the provisions of section 85 and the rules framed thereunder applicable to the ejectment applications filed under the Act. Rule 2 of the Rules framed under section 85 of the Punjab Tenancy Rules is in the following terms :...

“*Verification of applications* : (ii) every written application or statement filed by a party to a revenue proceeding shall be drawn up and verified in the manner provided by the Civil Procedure Code for written statements in suits.”

This rule provides that the ejectment applications have to be verified in the manner provided by the Civil Procedure Code for written statements in suits. Order 6, rule 15, Civil Procedure Code is, therefore, made applicable to the pleadings in the ejectment applications under the Act. Order 6, rule 15, Civil Procedure Code, reads as under :

“*Verification of pleadings*: (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.”

So, the ejectment application can be verified by one of the landowners. All of them are not required to verify the same. The

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conclusions of the Financial Commissioner that the Form K-1 which includes a solemn affirmation regarding the lands held by the applicants, should be signed by the applicants themselves are untenable. This is directly against the language and spirit of Order 6, rule 15 of the Civil Procedure Code. Similarly, the Financial Commissioner has fallen in error in holding that the general power of attorney is only for purpose of initiating and following up proceedings relating to ejectment and does not include making of solemn affirmation or declaration regarding the property of the principals. This conclusion is factually wrong. Clause (3) of the power of attorney clearly authorizes Baldev Singh to initiate proceedings, sign documents and file affidavits. That authority has been specifically given in this power of attorney. Even otherwise, this authority to make solemn affirmation impliedly includes the power to file ejectment applications. This conclusion is also wholly unwarranted on facts and in law. The affirmation has been signed by Baldev Singh. He has taken the responsibility for the veracity of the averments in the ejectment application. That is sufficient compliance with law.

(8) In *Atma Ram's case* (supra), the application had not been signed by the land-owner. It was dismissed on three grounds, namely, it was not signed by the land-owner, that it did not give the necessary particulars and that the applicant-land owner was a big land-owner. So, this case is distinguishable on facts. Moreover, no reasons have been given for reaching the conclusions reproduced above by the Financial Commissioner. The statutory provisions and the notification issued under section 86 of the Punjab Tenancy Act had not been brought to the notice of the Financial Commissioner. In *Fauja Singh's case* (supra), the Financial Commissioner has misread the provisions of section 86 of the Punjab Tenancy Act and rule 11 of the Rules as also section 14 of the Act. He has not considered the effect of the notification reproduced above. Both these decisions in *Atma Ram's case* and *Fauja Singh's case* (supra) do not lay down correct law. The applications filed by the petitioners through Baldev Singh are fully competent and fulfil all the requirements prescribed by law. Baldev Singh as general attorney had the authority to file these applications on behalf of his brothers and also on his own behalf. He had solemnly affirmed that the particulars given in the application are true. He has signed this affirmation. He is one of the land-owners. He is also the attorney. So, he could make this affirmation in either of the two capacities.

As such, the application contains a valid affirmation which is the requirement of law. No law requires that the ejectment application should be signed by all the land-owners. A recognized agent like a "general attorney" properly authorized is fully competent to file and pursue an ejectment application. So, in the present case, both the applications were validly made. They are fully competent. Accordingly, both these writ petitions are allowed and the orders passed by the Assistant Collector, Commissioner and the Financial Commissioner holding them incompetent are illegal and are set aside. The cases are now remanded to the Assistant Collector, 1st Grade for decision on merits in accordance with law. The parties are directed through their counsel to appear before the Assistant Collector 1st Grade, Fatehabad, on 26th of November, 1979. There shall be no order as to costs.

N.K.S.

Before Rajendra Nath Mittal, J.

DEEP CHAND,—*Petitioner.*

versus

KRISHAN DATT,—*Respondent.*

Civil Revision No. 1735 of 1979.

November 14, 1979.

Code of Civil Procedure (V of 1908)—Section 151 and Order 41 Rule 5—Suit for possession decreed—Judgment-debtor filing appeal and obtaining stay of execution—Decree holder put in possession before the communication of the stay order—Application by the judgment-debtor for restoration of possession—Court—Whether bound to restore possession—Proceedings after the stay order—When to be set aside.

Held, that the explanation to Order 41 Rule 5 of the Code of Civil Procedure 1908 provides that an order of the appellate court for stay of execution of decree shall be effective from the date of the communication of such order to the court of first instance. In case the order of stay is communicated to the executing court after the possession has been delivered to the decree holder, the stay order cannot be said to have become effective on the date when the possession was delivered to him. The interim proceedings after the stay