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*Before Jawahar Lal Gupta & N.C. Khichi, JJ.*

FAQUIRA & OTHERS,—*Appellants*

*versus*

KHEM CHAND & OTHERS,—*Respondents.*

L.P.A. 314 of 1996

14th January, 1999

*Letters Patent Appeal, 1909—Cl. X—Punjab Security of Land Tenures Act, 1953—S. 14-A—Eviction of tenant sought on non-payment of rent—Eviction proceedings initiated under section 77 of the Punjab Tenancy Act instead of the Punjab Security of Land Tenures Act—Eviction ordered—Whether eviction order vitiated merely because proceedings initiated under different Act—Respondent suffered no prejudice—No ground for interference made out.*

*Held*, that an application under section 77 for the eviction of a tenant has to be tried like a suit. By virtue of the provisions of S. 88 (2), the procedure as prescribed under the Code of Civil Procedure has to be followed. As against this, the procedure for applications under section 14-A is as prescribed in Section 10. The case has to be decided summarily. In the present case, the detailed procedure of the trial of a suit was followed. After the parties had completed their pleadings, the issues were framed. Evidence was recorded. On consideration of the evidence, detailed orders were passed. Thereafter, the respondent had availed of the remedies of two appeals and a revision petition. All the Courts had consistently held that the respondent-tenant had failed to pay rent without sufficient cause. In this situation, it is apparent that there was a detailed trial on the hypothesis that the Court was deciding a suit. The respondent had suffered no prejudice. On the contrary, he was afforded every possible opportunity to prove his case. It is clear that no prejudice whatsoever was caused. Thus, no ground for interference under Article 226 of the Constitution existed.

(Para 9)

M. L. Sarin, Sr. Advocate with Sweena Pannu, Advocate,—*for the Appellants.*

R. S. Mittal, Sr. Advocate with Mahesh Grover, Advocate,—*for the respondent-tenant.*

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JUDGMENT

*Jawahar Lal Gupta, J.*

(1) Is the order of eviction passed against the respondent-tenant vitiated merely because the appellant-the landlord had initiated proceedings under the Punjab Tenancy Act, 1887 and not under the provisions of the Punjab Security of Land Tenures Act, 1953. This is the short question that arises for consideration in this Letters Patent Appeal. A few facts may be noticed.

(2) The appellants instituted a suit for eviction in respect of land measuring 84 kanals 1 marla against Khem Chand and his brother Sham Charan. The complaint was two fold. Firstly, it was alleged that respondent-Khem Chand had failed to pay rent for a period of six years. Secondly, it was claimed that land measuring 63 kanals 5 marlas had been sub let by Khem Chand to his brother Sham Charan. Since the allegations were denied, the Assistant Collector Gurgaon had framed the following issues :—

- (1) Are the respondents liable for ejection according to the allegations in the petition ?
- (2) Are the petitioners entitled for recovery of rent. If so how much ?
- (3) Whether the respondent have the *Marusi* rights in land in question?
- (4) In case of ejection whether respondents are entitled to have something for improvement ?
- (5) Relief.

(3) After consideration of the evidence, it was held that Khem Chand was liable to be ejected on the ground of nonpayment of rent. The application was allowed. Aggrieved by the order, the respondent filed an appeal which was dismissed by the Collector,—*vide* order dated 21st August, 1987. It was held that the respondent was liable to be evicted not only on the ground of “non-payment of rent, but also on the ground of sub-letting.” The challenge to the orders was rejected by the Commissioner,—*vide* order dated 20th November, 1981. The revision petition before the Financial Commissioner had also met with the same fate. It was dismissed,—*vide* order dated 28th January, 1982. Copies of the orders have been produced as Annexures P-1 to P-4. Aggrieved by these orders, Khem Chand, the respondent-tenant filed a petition under Article 226 of the Constitution.

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(4) The learned Single Judge has held that the landlord having initiated proceedings under Section 77 of the Punjab Tenancy Act, 1887 and not under the provisions of Section 14-A of the Punjab Security of Land Tenures Act, 1953, the orders passed by the revenue courts were untenable. It has been observed that "the revenue court under the Punjab Tenancy Act, has no power of ordering eviction on the grounds mentioned in Section 9 of the Punjab Security of Land Tenures Act because a separate procedure and separate authority have been prescribed under the Punjab Security of Land Tenures Act, 1953 for ordering eviction of the tenant under Section 9 read with 14-A of the Act, 1953". Hence this appeal.

(5) Counsel for the parties have been heard.

(6) It is the admitted position that proceedings for the ejection of the respondent-tenant had to be initiated before the Assistant Collector, Grade-I. This was so done in the present case. It is also not disputed that the respondent was in default so far as the payment of rent was concerned. That being so, the primary question that requires determination is—Did the respondent suffer any prejudice by the act of the appellants in initiating proceedings under the provisions of the Punjab Tenancy Act, 1887 ?

(7) Mr. Mittal, counsel for the respondent-tenant contended that the proceedings had to be initiated under Section 14-A of the Punjab Security of Land Tenures Act, 1953. Since the appellants had initiated proceedings under Section 77, all the orders passed by different revenue courts are vitiated.

(8) It is the admitted position that the tenant can be evicted if any of the grounds enumerated in Section 9 of the 1953 Act is fulfilled. It is also not disputed that failure to "pay rent regularly without sufficient cause" is one of the grounds for the ejection of the tenant. In the present case, the revenue authorities have recorded a categorical finding that the respondent had failed to pay rent without sufficient cause. Thus, the ground for eviction under Section 9 is clearly made out. Nothing has been pointed out to show that the findings are untenable.

(9) Can we, despite this factual position, hold that the impugned orders are bad in law as held by the learned Single Judge ? We are afraid, it is not possible to say so. Firstly, it is the admitted position that an application under Section 77 for the eviction of a tenant has to be tried like a suit. By virtue of the provisions of Section 88 (2), the

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procedure as prescribed under the Code of Civil Procedure has to be followed. As against this, the procedure for applications under Section 14-A is as prescribed in Section 10. The case has to be decided summarily. In the present case, the detailed procedure of the trial of a suit was followed. After the parties had completed their pleadings, the issues were framed. Evidence was recorded. On consideration of the evidence, detailed orders were passed. Thereafter, the respondent had availed of the remedies of two appeals and a revision petition. All the courts had consistently held that the respondent-tenant had failed to pay rent without sufficient cause. In this situation, it is apparent that there was a detailed trial on the hypothesis that the court was deciding a suit. The respondent had suffered no prejudice. On the contrary, he was afforded every possible opportunity to prove his case. It is clear that no prejudice whatsoever was caused. Thus, no ground for interference under Article 226 of the Constitution existed.

(10) Mr. Mittal submitted that the notice as required under Section 14-A (ii) was not given to the respondent. However, it was conceded by the learned counsel that such a plea had not been raised at any stage before the revenue courts. Admittedly, the respondent had the opportunity to do so before the Assistant Collector. He did not. He could have raised the plea before the Collector. He failed to do so. Thereafter, even before the Commissioner, such a plea was not raised. Even finally, when the matter was placed before the Financial Commissioner, no such plea was raised. The giving of notice or the failure to do so is essentially a question of fact. It can't be raised for the first time before the High Court.

(11) No other point was raised.

(12) Resultantly, we find that the view taken by the learned Single Judge cannot be sustained. The appeal is allowed. The judgment of the learned Single Judge is set aside. The order of eviction as passed by the revenue courts is restored.

(13) Before parting with the case, we shall only observe that the respondent has continued in possession of the land for more than 35 years. Sometime in life, even the owner should get a chance to enjoy his property.

(14) In the circumstances, we make no order as to costs.

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*J.S.T.*