

M/s Isherdas Sahni and Brothers v. Union of India, etc. (Grover, J.)

parties or either party will not be conclusive in showing that the arbitration agreement has come to an end. The difficulty, however, remains as to what is the course to be followed in cases of the present type where the appointed Arbitrator either dies or refuses to act and where the vacancy cannot be supplied under section 8(1)(b) of the Act. Would the Court in this situation be justified in declaring that the arbitration agreement has been rendered ineffective and cannot be held to be binding any longer on the parties? The only authority on this point which has been brought to my notice is of the Sind Court in *Hariram Khiaram v. Gobindram Rattan Chand* (5) of O'Sullivan and Thandani, JJ. There the arbitration agreement was executed in 1942 and one of the appointed arbitrators refused to act as far back as 1943 and no attempt had been made at any time to supply the vacancy through the assistance of the Court as provided by section 8 of the Act. It was considered that there would be no justification for permitting the defence to rectify the error of procedure and the order of the Court below staying the suits was set aside. In other words, by necessary implication the reference was treated as having lapsed leaving the parties free to resort to the Civil Court for settlement of their disputes. On a parity of reasoning it would be legitimate to say in the present case that no further effect can be given to the arbitration agreement and that to all intents and purposes it should be treated as if it has become altogether ineffective. It is quite obvious that if no Arbitrator can now be appointed, the agreement cannot be held to be still alive; on the other hand even if it be assumed that an Arbitrator could be appointed and the vacancy could be supplied the reasoning given in the Sind judgment would apply and the result would be the same as has been arrived at by the Court below.

For the reasons given above, this petition is dismissed, but in the circumstances I leave the parties to bear their own costs.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

MST. SHUGNI,—Appellant

versus

BALDEV SINGH,—Respondent

Regular Second Appeal No. 1045 of 1958

September 2, 1966

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (VIII of 1953)—S. 3—Punjab Tenancy Act (XVI of 1887)—S. 9—Occupancy

(5) A.I.R. 1949 Sind 24.

tenancy—Whether can be acquired by adverse possession—Persons in adverse possession entered as occupancy tenants in revenue records for more than 12 years prior to the appointed day—Whether entitled to become owners—Landlord obtaining possession of land after vesting of proprietary rights in the persons who had acquired rights as Occupancy tenants by adverse possession—Suit by occupancy tenants as owners for possession against landlord—Whether must succeed.

K, an occupancy tenant, died in 1934 and two persons, claiming to be his heirs, entered into the possession of the land. Landlord obtained decree for possession against them on the ground that they were not the heirs of K but did not execute the decree nor obtained possession of the land. The judgment-debtors remained in possession for more than 12 years after the date of the decree and were entered as occupancy tenants in the revenue records before the appointed day as defined in the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act and under section 3 became the owners of the land. Thereafter the landlord obtained possession of the land and the occupancy tenants who had become proprietors filed a suit for the possession of the land against the landlord.

Held, that the suit must succeed as the plaintiffs had become occupancy tenants by adverse possession and later on acquired the proprietary rights under section 3 of the said Act.

Held, that if a person is in adverse possession of a limited interest in immovable property for 12 years or more, then he would be prescribing for only that limited interest and not for a proprietary title in the said property as against the real owner.

Held, that section 9 of the Punjab Tenancy Act, 1887, applies to a case where a person comes into possession of the property as a tenant with the permission of the landlord and not to persons who prescribe for occupancy tenancy by adverse possession.

Regular Second Appeal from the decree of the Court of Shri G. K. Bhatnagar, Senior Sub-Judge, with enhanced Appellate Powers, Hissar, dated the 16th day of August, 1958, reversing that of Shri Ram Pal Singh, Sub-Judge, 1st Class, Hissar, dated 21st August, 1957, and dismissing the plaintiff's suit with costs.

K. C. NAYAR AND C. M. NAYAR, ADVOCATES, for the Appellant.

G. C. MITTAL, ADVOCATE, for the Respondent.

JUDGMENT

PANDIT, J.—One Kheta was holding the land in dispute as an occupancy tenant under Chattar Singh. He died on 2nd of November, 1934, issueless and without leaving a widow. On his death,

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Sampat and Gulab Singh, who were his collaterals in the third degree, took possession of the land and mutation of occupancy tenancy was effected in their favour. Thereupon Chattar Singh filed a suit for possession of the land on the allegations that the tenancy had come to an end with the death of Kheta, and Sampat and Gulab Singh had no right to the said tenancy under section 59 of the Punjab Tenancy Act, because the land was not occupied by the common ancestor of Kheta and these collaterals, Chattar Singh's suit succeeded in the trial court, but it was dismissed on appeal by the District Judge. Thereafter Chattar Singh went in second appeal to the High Court at Lahore. On 17th of January, 1941, the said Court accepted the appeal and decreed the suit. During the course of this litigation, both Sampat and Gulab Singh died and Shrimati Shugni, widow of Sampat, was impleaded as his legal representative, while Gulab Singh was represented by his son Natha. Thus when the landlord's suit was decreed by the High Court, Shrimati Shugni and Natha were in possession of the land in dispute. The landlord neither got the decree of the High Court executed within three years nor did he file any suit for possession of the land by the ejectment of Shrimati Shugni and Natha. Thereafter Chattar Singh died and he was succeeded by his son Baldev Singh. According to Shrimati Shugni, Baldev Singh got into possession of the land as a tenant in Kharif, 1953, i.e., October, 1953. Shrimati Shugni and Natha had been continuously recorded as occupancy tenants in the revenue records. Therefore, under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Punjab Act No. VIII of 1953), the proprietary rights in this land vested in them and mutation to that effect was attested on 27th of April, 1953 by which they were declared to be the owners of the land. Thereafter Shrimati Shugni filed a suit in the revenue court for ejectment of Baldev Singh on the ground that he had taken possession of the land as a tenant under her in Kharif, 1953. This suit was dismissed by the Assistant Collector on 7th of September, 1955 and he held that Baldev Singh was holding the land as an owner in his own right and was not a tenant of Shrimati Shugni. The appeal against this order was also dismissed by the Collector on 22nd of February, 1956. That led to the filing of the present suit for recovery of possession of the land in dispute on 23rd of August, 1956 by Shrimati Shugni against Baldev Singh. Her allegations were that she had become full owner of the land, because the defendant did not take execution proceedings for twelve years and she had acquired title in the land by adverse possession. It was also alleged that even if she was an

occupancy tenant, she had become owner by operation of the Punjab Act No. VIII of 1953.

The suit was contested by the defendant who pleaded that his predecessor-in-interest had entered into possession of the land after the decision of the High Court; that he was in possession of the land as an owner; that the plaintiff had not become owner of the land by adverse possession; that she had admitted the defendant as her tenant and was thus estopped from bringing the suit in civil court; that she was not an occupancy tenant and therefore did not acquire any proprietary rights in the land under the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Act No. VIII of 1953); that the revenue court held the defendant to be the owner of the land, and therefore, the plaintiff's suit was barred by the principles of *res judicata* and that the suit was filed beyond limitation.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the plaintiff had become owner by adverse possession as alleged?
- (2) What is the effect of Act No. 8 of 1951?
- (3) Whether the plaintiff was rightly regarded as occupancy tenant on the appointed date?
- (4) Whether the civil court has no jurisdiction?
- (5) What is the effect of the judgment of the Revenue Court?
- (6) Whether the suit is barred by time?
- (7) Whether the plaintiff is estopped by her acts and conduct?
- (8) Relief.

The trial Judge held that the plaintiff remained in possession of the land since January, 1941 till October, 1953 after the judgment and decree of the High Court, dated 17th January, 1941. The possession of the plaintiff was not in accordance with law and was without the consent of the owner and as such she was in possession merely as a trespasser. The defendant did not execute the decree for twelve years and did not obtain possession of the land within 12 years; his decree, therefore, became inexecutable and under section

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47 of the Code of Civil Procedure a fresh suit for possession of the land was also barred. As such the title of the defendant to the land in dispute got extinguished under section 28 of the Indian Limitation Act. The title of the plaintiff, who remained in possession for 12 years as a trespasser and dealt with the land as her own by paying the land revenue and the consolidation charges, became complete after the expiry of 12 years. The learned Judge further held that the plaintiff had not been rightly recorded as an occupancy tenant in the revenue papers, because of the judgment given by the High Court in 1941 and consequently she could not be regarded as an occupancy tenant on the appointed day within the meaning of this word in Punjab Act No. VIII of 1953 and thus she could not acquire proprietary rights in the land by virtue of the provisions of this Act. Issues 4 to 7 were decided in favour of the plaintiff. As a result of these findings, the suit of the plaintiff was decreed.

Aggrieved by this decision, Baldev Singh went in appeal before the learned Senior Subordinate Judge, Hissar. According to him, Shrimati Shugni and Natha or their predecessors-in-interest never asserted their hostile title as owners to the land in dispute. They claimed only rights of occupancy in the land on account of their being collaterals of Kheta, the deceased occupancy tenant. They continued to hold this land as occupancy tenants till 1953. Even if they held occupancy rights in the land adversely to the landlord for 12 years, they could not become full owners of the said land as held by the trial court but they could at the most become occupancy tenants of the same. But in the instant case they could not become even occupancy tenants, because of the provisions of section 9 of the Punjab Tenancy Act which say that no tenant can acquire the rights of occupancy by mere lapse of time. The rule of law laid down in this section would apply also to a claim of acquisition of occupancy rights by adverse possession. Shrimati Shugni could, according to the learned Judge, not acquire a title of full ownership by claiming to remain in possession as an occupancy tenant only. But for section 9 of the Punjab Tenancy Act, she might have been able to acquire rights of occupancy in the said land. However, such acquisition was not permissible in the Punjab. The best right that she could acquire according to the learned Judge, was the limited right to remain in possession as a tenant. Her adverse possession could operate as a bar to a suit for her eviction from the land, but she could not acquire any ownership in this land by claiming limited interest and remaining in possession of the land as an occupancy tenant. It was further held by the learned Judge that since by virtue of the decree of the

High Court, Shrimati Shugni and Natha were not the occupancy tenants of the land, the mutation of these rights in their favour was not rightly sanctioned. As such, Shrimati Shugni could not acquire any proprietary rights in the said land on the basis of the Punjab Act No. VIII of 1953. The finding of the trial court that the plaintiff had become full owner of the land by adverse possession was, consequently, reversed. The findings of the trial court on other issues were not challenged before the learned Judge. He, accordingly, accepted the appeal, set aside the judgment and decree of the trial court and dismissed the plaintiff's suit. Against this, the present second appeal has been filed by Shrimati Shugni. During the pendency of the appeal in this court, Shrimati Shugni died and her adopted son Om Parkash was substituted in her place as her heir and legal representative.

Admittedly Kheta was holding the land in dispute as an occupancy tenant. On his death in November, 1934, Sampat and Gulab Singh took possession of the land claiming themselves to be the third degree collaterals of Kheta and mutation of the occupancy tenancy was also effected in their favour. According to Chattar Singh landlord, these collaterals were not the heirs of Kheta under section 59 of the Punjab Tenancy Act, because their common ancestor had not occupied the land. His case was that since the deceased occupancy tenant had left no heirs as mentioned in section 59 of the Punjab Tenancy Act on whom his right of occupancy could devolve, those rights were extinguished under sub-section 4 of section 59; in other words, Sampat and Gulab Singh were occupying the land without any right or title. Chattar Singh, therefore, brought a suit for possession of the land on these grounds. This suit was finally determined by the High Court at Lahore on 17th January, 1941, when it was decreed. It was held that those collaterals were not the heirs of Kheta within the meaning of section 59 of the Punjab Tenancy Act. In spite of this decree, the collaterals went on occupying the land as occupancy tenants and in the revenue records also they were described as such. As a matter of fact, their possession from its very start was unlawful; but the landlord, by filing the suit, had challenged their right to remain in possession of the land. That litigation went on till January, 1941. If the case had been finally decided by the High Court, say after 12 years from November, 1934, it could not have been seriously urged by the collaterals that they had acquired any rights by adverse possession, because the matter was still *sub judice*. In 1941,, their claim to be occupancy tenants had been negated by the High Court and they could, thus, no longer

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remain in possession of the land as such. From January, 1941 at any rate, therefore, there is no manner of doubt that they would be held to be in occupation of the land as trespassers as against the landlord. It is undisputed that after the High Court decree, the landlord did not take any steps to recover the possession of the land from them either by filing an execution application or by instituting a suit. They continued occupying the land till October, 1953, when Baldev Singh, the successor-in-interest of the original landlord, entered into possession of the land. They, thus, enjoyed the land for about 12 years and 9 months. It is pertinent to mention that during all this period, in the revenue records, they were described as occupancy tenants and not in adverse possession. It is true that it is in evidence that the land revenue was being paid by them and the consolidation charges were also recovered from them. But the point to be noted is that they never claimed adverse possession as full owners of the land in dispute, otherwise in the revenue papers their possession would have been described either as trespassers or as 'bawaja malkiat khud' (on account of assertion of their own title). It was not their case, therefore, that they had acquired full proprietary rights in the land by adverse possession. If the landlord did not take any steps to recover possession of the land and allowed these collaterals to remain in occupation of it for over 12 years, they could not become full owners of the land, because they were in possession thereof as occupancy tenants only. The question then arises as to whether they would acquire occupancy rights by adverse possession. There is ample authority for the proposition that if a person is in adverse possession of a limited interest in immovable property for 12 years or more, then he would be prescribing for only that limited interest and not for a proprietary title in the said property as against the real owner [See *inter alia*, *Swarnamovi and another v. Sourindra Nath Mitra and others* (1) and *Mt. Ram Piari v. Nawab Singh and others* (2)]. Applying this principle, the collaterals were only prescribing for the rights of occupancy tenancy in the land in dispute and since they remained in possession for over 12 years, they had become occupancy tenants of this land by adverse possession. The learned Senior Subordinate Judge would have given this finding, but for the provisions of section 9 of the Punjab Tenancy Act. The learned Judge seems to be of the view that in the Punjab nobody can acquire rights of occupancy tenancy by adverse possession

(1) A.I.R. 1925 Cal. 1189.

(2) A.I.R. 1950 All. 496.

merely on account of section 9 of the Punjab Tenancy Act, which says that no tenant shall acquire the right of occupancy by mere lapse of time. Now the point for decision is whether this section stands in the way of the Court giving effect to the general principle that if some body is in adverse possession of a limited interest in immovable property, then after 12 years he acquires that interest and no more by adverse possession. As I read section 9, it means that if a person who comes into possession of the property *as a tenant with the permission of the landlord*, then he cannot acquire *occupancy rights* in that land even if he remains in possession thereof for any number of years. In the instant case, it is not the case of the landlord that the collaterals originally occupied the land as tenants with his permission. Besides it is not the position of the collaterals that they were laying claim to these occupancy rights by mere lapse of time and that their entry into the land from its inception was as tenants of the landlord. They occupied the land as the heirs and successors-in-interest of Kheta who was admittedly the occupancy tenant of the land and their claim was also based on adverse possession and not mere lapse of time. Section 9, therefore, in my opinion, will not stand in the way of the collaterals to acquiring occupancy rights by adverse possession. Both according to the learned Senior Subordinate Judge and the counsel for the landlord, there was no other impediment in the way of the collaterals becoming owners of the occupancy rights by adverse possession. The adverse possession of the collaterals commenced from January, 1941 and the period of 12 years ended in January, 1953. They, therefore, became occupancy tenants in January, 1953. On 15th of April, 1953, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Punjab Act No. VIII of 1953) was published in the Government Gazette. By virtue of section 3 thereof, the proprietary rights in the said land, which belonged to the landlord, were extinguished and the same vested in the occupancy tenants. The mutation to this effect was also sanctioned in favour of Shrimati Shugni on 27th of April, 1953. She was dispossessed from this land in October, 1953. Her suit for ejection of the landlord on the ground that he had occupied the land as her tenant failed in the revenue court finally on 22nd of February, 1956. In August, 1956 she brought a suit against Baldev Singh, the landlord, in the civil court for possession of the land in dispute on the basis of her title. This suit must succeed, because I have already held above that she had become owner of occupancy rights of the said land by adverse possession and later on she acquired the proprietary rights also by virtue of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights)

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Act, 1952 (Act No. VIII of 1953). In this view of the matter, no other question arises for decision in the instant case.

The result is that this appeal succeeds, the judgment and decree of the lower appellate court are set aside and the plaintiff's suit is decreed. In the circumstances of this case, however, I would leave the parties to bear their own costs throughout.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

HARI SINGH ZAILDAR AND OTHERS,—*Appellants*

versus

THE MILITARY ESTATE OFFICER AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 234 of 1963

September 5, 1966

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)—S.2(c) —‘Premises’— Whether includes agricultural land belonging to the Union of India.

Held, that the definition of the word ‘premises’ in section 2(c) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, includes the word ‘land’ without giving the scope and extent of the meaning of that word. But that does not in any way detract from the full meaning of the word “land” which word does include within its meaning agricultural land.

Held, that under entry 32 of List I of the Seventh Schedule to the Constitution, the Parliament has the exclusive power to legislate on the property of the Union, which includes even agricultural land. According to entry 18 in List II, the Legislature of the State has the exclusive power to legislate with regard to agricultural land. Of course entry 32 in List I makes the legislative power of the Parliament subject to legislation by the State with a further saving that the Parliament may by law provide otherwise. The Parliament has by law provided otherwise by the Public Premises (Eviction of Unauthorised Occupants) Act on the