

under section 204 Cr.P.C. is proposed to be issued against the accused. It is hardly material that the process under this section is issued against the accused in a case initiated on a private complaint to the Court or in pursuance of a police challan. It is significant that section 204 is included in Chapter XVI of the Code relating to commencement of proceedings before Magistrates and not in Chapter XV which deals with private complaints to Magistrates. It is thus clear that it is necessary for the Magistrate (Special Judge) to form an opinion in terms of section 204(1) that there is sufficient ground for proceeding against the accused even in a warrant case where a summon or warrant is proposed to be issued against him thereunder.

(12) The Special Judge ordered on February 10, 1981, that the petitioners in all the petitions be summoned for February 27, 1981. This abrupt order was passed by the Special Judge without application of mind and without forming an opinion that there was sufficient ground for proceeding against the petitioners in terms of section 204(1) Cr.P.C. The impugned order relating to the summoning of the petitioners being violative of section 204(1) Cr.P.C. cannot be sustained.

(13) In the result, all the four petitions are allowed and the impugned order of the Special Judge dated February 10, 1981, summoning the petitioners for February 27, 1981, quashed. It will be open for the Special Judge to proceed in the matter afresh according to law.

N.K.S.

FULL BENCH

Before P. C. Jain, A.C.J., D. S. Tewatia & I. S. Tiwana, JJ.

RATTAN SINGH AND ANOTHER,—Appellants.

versus

RAM PARKASH AND OTHERS,—Respondents.

Regular Second Appeal No. 2543 of 1981.

May 8, 1985.

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Section 3—Specific Relief Act (XLVII of 1965) Section 34—Sale of occupancy rights—Suits by reversioners

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challenging the sale on the ground of want of consideration and legal necessity—Court declaring the sale invalid but converting the same into a mortgage redeemable on the death of the vendor when succession would open—Reversioners after the death of the vendor claiming possession by redemption in terms of the declaratory decree—Alienee—Whether entitled to the benefit of section 3 and could claim ownership rights—Effects of the declaratory decree—Such decree—Whether enures notwithstanding the provisions of section 3—Suit of the reversioners—Whether could be decreed.

Held, that the alienation of occupancy rights having been successfully challenged by the reversioners and a declaration granted in their favour that after the death of the alienor they would be entitled to redeem the land, the result of the declaratory decree is that the sale of occupancy rights has been held to be invalid. However the reversioners would take the benefit of the decree only after the death of alienor when the succession would open. So far as the interest of the alienees was concerned, it had become merely contingent, i.e. that on the death of the alienor they were to lose that interest in the event of the reversioners filing a suit for possession within the period of limitation. The right and title of the alienee to the estate would ensure for the life time of the alienor. Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 has only enlarged the estate which, according to the decree, is to go back to the reversioners on their filing a suit for possession. The effect of the decree cannot be taken away merely for this reason that as a result of the provisions of Section 3 of the Act, the rights of the occupancy tenants stand enlarged. The alienee, though by operation of law, may have become the owner of the estate, yet this right of theirs is precarious as the estate of which they have become the owner, is to go back to the reversioners after the death of the alienor.

(Para 7).

Khushi Ram v. Jaswant Rai and others, 1966 P.L.R. 922.

OVERRULED.

(Case admitted to Division Bench and the Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Surinder Singh referred the case to the larger Bench on 28th August, 1984 as an important question of law involved in the case. The Full Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice I. S. Tiwana finally decided the case on 8th May, 1985).

Regular Second Appeal from the decree of the court of the Additional District Judge, Gurdaspur dated the 13th day of August,

1981 affirming that of the Sub Judge 1st Class, Gurdaspur, dated the 26th day of December, 1978 dismissing the suit of the plaintiffs with no order as to costs.

M. L. Sarin, Advocate with Sukhdev Singh, Advocate, for the Appellant.

Maluk Singh, Advocate with Gurdial Singh, B. N. Sharma, Ashok Sharma and Kapil Sharma, Advocates, for the Respondents.

JUDGMENT

Prem Chand Jain, A.C.J.

(1) In order to appreciate the controversy, certain salient features of the case may be noticed :—

(2) One Vakilo was the last male owner of land measuring 163 Kanals. He sold his occupancy rights on 7th July, 1934, in respect of the said land for a consideration of Rs. 2,900/- through a registered sale-deed to Lachhman Dass father of Ram Parkash, respondent No. 1 and Mehar Chand, predecessor-in-interest of respondents Nos. 2 to 5. Rattan Chand, plaintiff-appellant, who was minor at that time, filed a declaratory suit, challenging the sale made by his father, on the pleas that the land was ancestral and the sale was not for legal necessity. The suit was decreed by the trial Court on 17th October, 1945, and the alienation was held to be not binding on the decendants of Vakilo, after his death. Lachhman Dass, Vendee, preferred an appeal, which was accepted to this extent that the sale of the occupancy rights was converted into mortgage, which was made to become operative on the death of Vakilo, whereafter Rattan Singh or the legal reversioners would be entitled to redeem the mortgage on payment of Rs. 2,900/-. This decree passed by the Appellate Court became final as the matter was not carried any further. Vakilo died on 19th January, 1977, with the result Rattan Singh and Puran Singh, sons of Vakilo filed a suit for possession by way of redemption of the land in dispute. The suit was contested by the respondents. One of the pleas raised by the respondents with which we are concerned in this appeal is that Lachhman Dass who had purchased the occupancy rights had become the owner of the suit land during the life time of Vakilo by virtue of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (herein-after referred to as the Act) and as such the plaintiffs-appellants were not entitled to any relief, as the rights sold by their father to

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Lachhman Dass had ceased to exist. On consideration of the entire matter, the trial Court decided this point in favour of the defendants-respondents and it was held that by operation of law the respondents had become the owners of the land in dispute. Consequently, the suit of the plaintiffs was dismissed.

(3) Feeling aggrieved from the judgment and decree of the trial Court, the plaintiffs preferred an appeal, but did not succeed. Still dissatisfied, the present appeal has been preferred by the plaintiffs.

(4) On 27th January, 1982, the appeal came up for motion hearing before a learned Single Judge of this Court, who admitted the same to hearing by a Division Bench. Thereafter, the appeal came up for hearing before a Division Bench. As is evident from the referring order, the Bench found that there was a conflict between the two Division Bench judgments of this Court in **Jiwan Singh v. Ram Kishan and others** (1), and **Khushi Ram v. Jaswant Rai and others**, (2), and found that the controversy deserved to be resolved by a larger Bench. Consequently, the matter was referred for decision by a larger Bench and that is how we are seized of the matter.

(5) The only point that needs determination in this case is whether Lachhman Dass in whose favour Vakilo had sold the occupancy rights had become the owner of the land by operation of law. It was contended by Mr. Sarin, learned counsel for the appellant that as the sale in favour of Lachhman Dass had been converted into a mortgage, Lachhman Dass could not become the owner of the land in dispute in view of the provisions of Section 3 of the Act. It was further submitted by the learned counsel that the sale of the occupancy rights was held to be not binding on the reversioners, that Lachhman Dass during the life time of Vakilo could only enjoy the usufruct of the land in dispute, that Lachhman Dass could not be treated as an occupancy tenant of the land in dispute and that he could not by operation of law be deemed to have become the owner of the land in dispute. In the alternative it was submitted by the learned counsel that even if Lachhman Dass became the occupancy tenant and by virtue of the provisions of Section 3 of the Act had become owner of the property in dispute, then also, the effect of the decree passed in favour of the reversioners could not be taken

(1) 1966 P.L.R. 626

(2) 1966 P.L.R. 922.

away and that in case after the death of the alienor, a suit for possession is filed, then possession of the estate has to be given back to the reversioners.

(6) On the other hand, it was submitted by Thakur Maluk Singh, learned counsel for the respondents, that after the sale, Lachhman Dass had become the occupancy tenant of the land in dispute, that on the appointed date, possession of Lachhman Dass was that of a occupancy tenant, that in view of the provisions of Section 3 of the Act, Lachhman Dass would be deemed to have become the owner of the land in dispute, that under the decree passed in favour of the reversioners the only right available to them was to succeed to the estate of Vakilo, that after the coming into force of the Act, the estate to which they could succeed ceased to exist, with the result that the decree would be deemed to have become infructuous and that the defendants who by virtue of the sale had become the occupancy tenants, would be deemed to have become the owners of the land in dispute. It was also submitted by the learned counsel that the conversion of the sale into mortgage by the District Judge, on appeal, would have no bearing so far as the ripening of the right into full ownership of Lachhman Dass under the Act is concerned.

(7) I have given thoughtful consideration to the entire matter and find considerable force in the contention of the learned counsel for the appellant. As is evident from the facts, Vakilo had transferred his occupancy right in favour of Lachhman Dass, but that alienation was successfully challenged by the reversioners and a declaration was granted in their favour that after the death of Vakilo they would be entitled to redeem the land on payment of Rs. 2,900/-. The result of that declaratory decree was that the sale of occupancy rights was held to be invalid, vis-a-vis the plaintiffs and the defendants. However, the reversioners would take the benefit of the decree only after the death of alienor when the succession would open. So far as the interest of the defendants was concerned, it had become merely contingent, i.e., that on the death of Vakilo they were to lose that interest in the event of the reversioners filing a suit for possession within the period of limitation. The right and title of the alienee to the estate would ensure for the life time of the alienor. Section 3 of the Act has only enlarged the estate, which according to the decree, is to go back to the reversioners on their filing a suit for possession. In my view, the effect of the decree cannot be taken away merely for this reason that as a result of the provisions of Section 3 of the Act, the rights

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of the occupancy tenants stand enlarged. The alienee, though by operation of law, may have become the owner of the estate, yet this right of theirs' is precarious, as the estate of which they have become the owner, is to go back to the reversioners after the death of the alienor. On this aspect of the matter, with respect I commend the view enunciated by the Bench in **Subedar Jiwan Singh case** (supra) and with respect unable to subscribe to the view on this question in **Khushi Ram's case** (supra). The relevant observations from **Subedar Jiwan Singh's case** (supra), on the point in issue, read as under :—

"11. It is common ground now before us that the creation of occupancy rights in ancestral land could only stand if it was justified by necessity. The declaratory decree declared the creation of such a tenancy invalid vis-a-vis the plaintiffs and the defendants. The plaintiffs could only take the benefit of the decree at the time when the succession would open out and if they were the heirs at law to the subject matter of the declaratory decree. It is a settled rule of custom as well as of Hindu Law that a male owner lives so long his widow lives and the succession only opens out on the death of the widow. But if there is no widow left by the last male-holder, the succession does open out at the time of the death of the last male-holder. In the present case, the succession opened out on the death of Gurdevi. The defendants interest in land had become merely contingent, i.e., on the death of Gurdevi they will lose that interest. As soon as Gurdevi died, they were left with no interest in the land. The question then arises whether the coming into force of the Punjab Act No. VIII of 1953 does make any difference. In our opinion, it does not. Whether the law diminished those rights or increased those rights will not matter because the basis for the increase or the decrease were the five transactions which had been declared void as between the plaintiff and the defendants. The learned counsel for the respondents at this stage pressed into service the decision in **Harnam Kaur and another v. Sawan Singh and others**, for the proposition that the ownership rights, are not accretion to the occupancy rights, when by operation of law such rights are annihilated. The proposition was laid down while determining the question whether the ..."

an occupancy tenant, kept the ancestral character of those rights. It was not the case where the question, as has arisen in the present case, fell for determination. Those observations must, therefore, be confined to the facts of that case.

12. In the present case, the alienees acquired occupancy rights. Those rights not only became precarious but also became void by reasons of the declaratory decree. The decree kept alive those rights so long the alienor lived. They had to come to an end on his death and in case he left a widow, on her death. Therefore, whatever comes by reason of those rights will form part and parcel of the same and will suffer from the same infirmity with which those rights did suffer. The larger estate created by the Act will not vest in the alienees for whatever title they get to the land under the Act will ensure for the life time of the alienor in terms of the decree and on his death their rights in land would come to an end. Therefore, it hardly matters that the defendants acquired the proprietary rights. They could only hold those proprietary rights up to the death of the widow and after the death of the widow, those rights would pass on to the reversionary heirs. Moreover, section 3 does not deal with decrees. It does not nullify decrees whether they are declaratory or otherwise. The decree cannot be equated with custom as the learned Judge seems to have done. Custom merely gives a right to obtain a decree but it cannot be said that the decree is custom or usage. The decree had set at naught the alienation so far as the plaintiffs and the defendants are concerned. The decree binds them unless its binding force is taken away by law.
13. In whatever perspective the matter is examined, we are clearly of the view that the defendants could not defeat the plaintiffs' suit. Their title was precarious and it endured only so long as the life of the alienor endured. Whether that life came to an end with his own death or with the death of his widow, did not matter. The alienation was *non est* so far as the plaintiffs are concerned. It was voidable at their instance and moment they avoided it, it became void. Therefore, as between the plaintiffs and

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the defendants it is futile for the defendants to urge that they are occupancy tenants and thus become the full proprietors of their occupancy tenancy.”

(8) In view of the aforesaid discussion, I hold that the plaintiffs are entitled to a decree for possession on payment of Rs. 2,900/-.

(9) It is further held that the view in **Khushi Ram's case** (supra) does not lay down the correct law and, is, consequently, over-ruled.

(10) No other point arises for determination.

(11) For the reasons recorded above, we allow this appeal, set aside the judgments and decrees of the Court and pass a decree for possession in favour of the plaintiffs and against the defendants on payment of Rs. 2,900/-. In the circumstances of the case, we make no order as to costs.

D. S. Tewatia, J.—I agree.

I. S. Tiwana, J.—I agree.

N.K.S.