

Khushi Ram *v.* Jaswant Rai, etc. (Shamsher Bahadur, J.)

APPELLATE CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

KHUSHI RAM,—*Appellant*

versus

JASWANT RAI AND OTHERS,—*Respondents*

Second Appeal From Order No. 68 of 1964

August 10, 1966

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (VIII 1953)—Ss. 2 and 3—Landlord creating occupancy tenancy in respect of ancestral land in consideration of Rs 400—Reversioners obtaining declaratory decree that alienation will not affect their reversionary rights and the land will be liable to be redeemed on payment of Rs 250, after the death of the landlord—Occupancy tenant in possession of the land when Act VIII of 1953, came into force during the lifetime of the landlord—Occupancy tenant—Whether becomes proprietor of the land comprised in his occupancy tenancy.

Held, that a declaratory decree does not *per se* pass any rights to the reversioners and the title of the alienee subsists even after the death of the alienor “unless and until the reversioner takes steps within limitation to displace him”. The decree gave only a right of defeasance to the reversioners and this stood extinguished by the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, before it was capable of being enforced on the landlord’s (alienor’s) death. It only embodied an inchoate right and when it was sought to be enforced, the occupancy tenant (alienee) had become a full proprietor.

Held, that the alienor and the alienee, even if their rights had become precarious because of the declaratory decree still remained landlord and tenant, respectively under the Punjab Act No. 8 of 1953, and the appellant falling within the definition of an ‘occupancy tenant’ came to be fully vested with proprietary rights of his landlord.

Case referred by the Hon’ble Mr. Justice Shamsher Bahadur on 2nd February, 1966 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon’ble Mr. Justice Shamsher Bahadur and the Hon’ble Mr. Justice R. S. Narula on 10th August, 1966.

Second Appeal from the order of Shri Joginder Singh, Senior Subordinate Judge, Hoshiarpur, dated 24th October, 1964, reversing that of Shri Rameshwar

Lal, Additional Sub-Judge, 3rd Class, Hoshiarpur at Una, dated the 5th February, 1964, accepting the appeal and remanding the case to the lower Court for its decision on merits.

R. N. MITTAL AND NAGINDER SINGH, ADVOCATES, for the Appellant.

GANGA PARSKAD JAIN WITH BALWANT SINGH GUPTA, G. C. GARG AND M. R. AGNIHOTRI, ADVOCATES, for the Respondents.

JUDGMENT OF THE DIVISION BENCH

The following judgment of the Court was delivered by—

SHAMSHER BAHADUR, J.—The facts giving rise to this appeal are stated in my order of reference of 2nd of February, 1966, in pursuance of which this case has come before us, for disposal. These may briefly be recapitulated. A parcel of land measuring 3 *kanals* and 19 *marlas* was alienated by Shama in favour of Tulsi Ram on 28th of May, 1927. This alienation had the result of creating an occupancy tenancy in favour of Tulsi Ram in consideration of a sum of Rs. 400. The whole transaction was reduced in writing,—*vide* Exhibit D. 1. It may be mentioned that Shama had three brothers, Ajudhia Das, Hamiru and Mohan. Mohan and Ajudhia Dass have died issueless. Shama had also three sons, Neem Chand, Karam Chand and Jaswant Rai besides three daughters with whom we are not concerned in this litigation. Soon after the alienation in favour of Tulsi Ram, which is evidenced by Exhibit D. 1, Ajudhia Dass instituted a suit for a declaration that creation of the occupancy tenancy in favour of Tulsi Ram would not be binding on his reversionary rights. This suit which was filed on 12th of June, 1927, was decreed by the Subordinate Judge on 28th of November, 1927. The decree of the Court is Exhibit P. 4, and it is stated therein that the suit had been instituted for a declaration that the alienation was not binding on him on the ground that it was without consideration and necessity and was made with a view to destroy the reversionary rights. Tulsi Ram in his appeal before the District Judge met with partial success, it having been found that the consideration for Rs. 250 had been proved. In the operative portion of the decree of the lower appellate Court it was mentioned that the creation of occupancy rights by Shama will not affect the reversionary rights on the death of Shama "in so far as to declare the alienation to be of no effect as against the reversionary rights of the plaintiff except to the extent of Rs. 250". The decree in

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effect stated this that the plaintiffs' reversionary rights will come into operation after the death of Shama "except to the extent of Rs. 250". Shama was alive when the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, Punjab Act No. 8 of 1953 (hereinafter also called the Act) was enforced with effect from 15th of June, 1952, and died more than 10 years later on 2nd December, 1962. On the death of Shama, his three sons Neem Chand, Karam Chand and Jaswant Rai along with Hamiru brought a suit which has given rise to this appeal against Tulsi Ram for possession of land including the land in respect of which occupancy tenancy was created in his favour. This suit instituted on 15th January, 1963, was dismissed by the Subordinate Judge on 5th of February, 1964. Although a number of issues had been raised on the pleas of the parties, the trial Judge dismissed the suit on the ground, which was treated as a preliminary issue, that the rights of Shama and his successors-in-interest had been extinguished by section 3 of the Act which provides that with effect from 15th of June, 1952, "all rights title and interest (including the contingent interest, if any recognised by any law, custom or usage for the time being in force) of the landlord in the land held under him by an occupancy tenant, shall be extinguished" The landlord, under clause (e) of section 2 means "a person under whom an occupancy tenant holds land.....and includes the predecessors and successors in interest of a landlord and shall for the purposes of section 4 include the mortgagee". In the view of the trial Court, the landlord on 15th of June, 1952, was Shama and he being alive at that time his rights were extinguished in favour of the occupancy tenant. No doubt, a decree was obtained by Ajudhia which enured for the benefit of the reversioners but nothing could have been done to enforce these rights granted by that decree before the death of Shama. These inchoate rights could not be enforced on 15th of June, 1952, when, according to section 3, the occupancy tenant came to acquire the proprietary rights as against the landlord.

The appellate Court, however, took the view that the decree granted by the District Judge, Hoshiarpur, on 30th of March, 1928 (Exhibit P. 3) permitted Shama to continue to hold the land under the occupancy tenant till his death after which the reversioners were declared to be proprietors "except to the extent of Rs. 250". This decree is still of operative force, according to the lower appellate Court which has accordingly allowed the appeal and remanded the case to the trial Judge for disposal on merits. From this decision of the lower appellate Court of 24th of October, 1964, Tulsi Ram has

filed an appeal. It may be mentioned in passing that Tulsi Ram having died during the pendency of the appeal, it is now being continued on behalf of his son who has been impleaded as an appellant.

The question requiring determination being important and also because of the probability of an appeal by the aggrieved party, the matter was referred for decision by a larger Bench.

The fate of the legal battle between the parties confined to the preliminary issue turns on the true construction of the provisions of the Act and also of the decree under which the reversioners claim to succeed to the suit property as the successors of Shama. Mr. Mittal, who has argued the case for the appellant, has contended that Exhibit P. 3 which is the foundation of the defendant's title is at best a declaration of an inchoate right and something more had to be done by the reversioners collectively or individually to enforce their claim after the death of Shama. They were incapacitated from taking any action till Shama's death. What intervened between the passing of the decree Exhibit P. 3 on 30th March, 1928, and the death of Shama on 2nd December, 1962, has to be taken into account and the most important circumstances which supervened was the passage of the Act which extinguished proprietary rights of a landlord in favour of an occupancy tenant. This statutory expropriation being a measure of agrarian reform made an end of whatever rights Shama had in the land. After 15th June, 1952, Tulsi Ram had become a proprietor in pursuance of the law embodied in the Act and the reversioners cannot be heard to say that the rights to enforce their claim on the land covered by the occupancy tenancy on payment of Rs. 250 was still preserved after 15th June, 1952. It is argued that when Shama himself had ceased to have any proprietary title, it was hardly possible to spell out any greater right for persons who at best had a derivative title from Shama himself. The statement of law regarding the nature of a declaratory decree of this kind is best summarised by Achhru Ram, J., a great master of the law of custom, in *Gokal v. Haria*, (1). In the words of the learned Judge:—

“It is well-settled that till succession opens out no reversioner can claim any right to or interest in the property in the possession of the limited owner. Till succession opens

(1) AIR. 1949 E.P. 414.

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out, the reversionary interest is merely in the nature of *spes successionis* and it cannot be postulated with regard to any particular person whether at the time the estate falls into possession he would be entitled to the property. When the presumptive reversioner brings a suit for a declaration that an alienation by a limited owner should not affect his reversionary rights at the time of the succession opening out and the suit is decreed, the only effect of the decree is to declare the alienation to be invalid except for the life of the alienor. The declaratory decree does not pass any title to the presumptive reversioner and does not create any right in him in the property alienated. The title still remains in the alienee. The effect of the various provisions of Punjab Act No. 1 of 1920 read together is that the alienee's title subsists even after the death of the alienor unless and until the reversioner takes steps within limitation to displace him."

It cannot be disputed that Shama was entitled to hold the property of the occupancy tenant as a proprietor and the decree Exhibit P. 3 rather affirmed that right which the alienor possesses according to Punjab Customary Law. Mr. Mittal lays emphasis on the later portion of the statement of law so accurately summarised by Achhru Ram, J., The declaratory decree does not *per se* pass any rights to the reversioners and the title of the alienee subsists even after the death of the alienor "unless and until the reversioner takes steps within limitation to displace him". Till the death of Shama, in other words, the title remained in the alienee Tulsji Ram as an occupancy tenant. Tulsji Ram had acquired full proprietary rights, according to the learned counsel, on 15th of June, 1952, and need not therefore, have taken any effective steps after the death of Shama to take possession of the property. The decree Exhibit P. 3, as observed by the trial Judge, gave only a right of defeasance to the plaintiffs and this stood extinguished by the Act before it was capable of being enforced on Shama's death. The plaintiffs, for whose benefit the decree Exhibit P. 3, undoubtedly enured, could have taken advantage of it only before the Act was passed and that too if Shama had died before the 15th of June, 1952. The decree Exhibit P. 3 by itself could confer no right. It had still to be enforced. It only embodied, in other words, an inchoate right and when it was sought to be enforced, Tulsji Ram had become a full proprietor.

The respondents' counsel has sought to evade this conclusion by a series of arguments which, in our view, cannot prevail. It is submitted in the first place that the preamble of section 3 provides that the extinguishment of the proprietary rights in favour of an occupancy tenant would take place "notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force" and this rules out the case of a Court decree like Exhibit P. 3, which is the charter of the plaintiffs' claim. It is pointed out that the case is not one of mere inadvertent omission (*cacus omissus*) which can in suitable cases be filled by Courts. It is argued that the case is one of deliberate omission and the Legislature must be deemed to have been aware that a large number of declaratory decrees are usually passed in favour of reversioners against alienations which are found to be without consideration and necessity. Declaratory decrees have always been a well-known feature in cases involving alienation of agricultural lands among persons governed by customary law and if they were also to be ignored, the word "decree" would have occurred in juxtaposition with "law, custom or usage". The plaintiffs were silenced both by the decree as well as the general customary law to take any action for possession till the death of Shama. The passage of the Act made no difference, according to the learned counsel for the respondents, in the rights which had been preserved by Exhibit P. 3. It is stressed that a right of this nature survives till it is specifically extinguished by the Legislature. The Act did not so extinguish this right in specific terms and hence the plaintiffs, according to this submission, could not be ousted, as held by the trial Court.

It is further contended by Mr. Ganga Parshad Jain, the counsel for the respondents, that neither Shama was a landlord in the sense in which this term is used in section 3, nor was Tulsi Ram an occupancy tenant capable of taking advantage under the provisions of the Act. It is suggested that Shama's power as a landlord had been considerably trimmed by the decree Exhibit P. 3 and to that extent he was not a landlord whose rights were extinguished under section 3(a). Tulsi Ram also, according to this suggestion, was not a full-fledged occupancy tenant because the land in his occupation as an occupancy tenant was liable to redemption on payment of Rs. 250. Shama and Tulsi Ram, in other words, are not covered by the concepts of 'landlord' and 'occupancy tenant', respectively used in the provisions of the Act. If this contention were to be accepted, it would mean that the terms 'landlord' and 'occupancy

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tenant' would be capable of different meanings in different situations. To repeat, a 'landlord' under clause (e) of section 2 means "a person under whom an occupancy tenant holds land and to whom the occupancy tenant is, or but for a special contract would be, liable to pay rent for that land, and includes the predecessors and successors-in-interest of a landlord and shall for the purposes of section 4 include the mortgagee". An 'occupancy tenant' under clause (f) means "a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a Court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant". So far as the definition of 'occupancy tenant' is concerned, there is no reason to say that Tulsj Ram does not fall within its pale. The only requirement is that the person should be recorded as an occupancy tenant and it has never been suggested that this requirement was not fulfilled in the case of Tulsj Ram. Shama, likewise, remained a landlord till his death even according to the decree which is claimed by the respondents to have clipped his rights as a landlord. The declaratory decree, like Exhibit P. 3, did not deprive Shama of the attributes of a landlord which are mentioned in clause (e) of section 2. Indeed, the plaintiffs could be regarded none else but successors-in-interest of Shama when and if they are able to succeed to the rights of Shama. In whatever way the matter is looked at, the rights of plaintiffs even if they are deemed to have stepped into the shoes of Shama would stand extinguished under the Act.

Mr. Jain has placed reliance on a recent Division Bench decision of Chief Justice Falshaw and Mahajan, J. in *Jivan Singh v. Ram Kishan and others* (2). In that case Biroo had executed documents to transfer occupancy rights in land of which he was the full owner. A suit was brought by Biroo's collaterals for a declaration under custom to challenge the alienations on the ground that the land being ancestral should not affect the revisionary rights. The suit was decreed and the transactions were held to be sales. The suit of the reversioners was decreed. Biroo, on his death, was succeeded by his widow Mst. Gurdevi, who died on

(2) I.L.R. (1966) 2 Punj. 874—1966 P.L.R. 626.

10th October, 1954. The occupancy tenants, on the passing of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, became proprietors with effect from 15th June, 1952, and thereafter the reversioners brought a suit for possession. In that case, it was held that transactions which had been impugned and were actually set aside, were in fact sales and had been "garbed" as occupancy tenancies. It had all along been assumed in that case that no occupancy tenancy was at all created and the alienation was nothing more than a sale. On that finding, the reversioners naturally succeeded. At page 631, it was held by the Bench that the impugned transaction or alienation was in fact sale and the alienation was without necessity and, therefore, became inoperative after the death of the alienor. On these conclusions the question which arises in the present appeal need not have been decided. Reliance is, however, placed on an observation of Mahajan, J., in this judgment which at best can be regarded as an *obiter*, not having anything to do with the decision of the point which actually fell for adjudication before the Bench. The observation is to this effect and is found at page 631 of the report:

"Even if it is assumed that the five transactions merely created occupancy tenancies, it was open to the reversioners to challenge their creation as opposed to custom inasmuch as no alienation of ancestral immovable property is valid unless it is for necessity".

Further, it was observed by the learned Judge:—

"The question then arises whether the coming into force of the Punjab Act No. XIII 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 bases for the increase or the decrease were the five transactions which had been declared void as between the plaintiff and the defendants."

These two observations have been relied upon by Mr. Jain for the proposition that Bank had actually decided that an occupancy tenancy created without consideration or necessity would not be capable of receiving proprietary rights under section 3 of the Act. This point did not call for a decision and, in our opinion, *Jiwan Singh's* case cannot

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be pressed into service as an authority on the point in issue.

The matter may be looked at in another way. As stated in the 'Objects and Reasons', Punjab Act No. 8 of 1953 was passed to confer proprietary rights in the land on the actual tiller of the soil "in conformity with modern trends of thought" and as a measure "to ameliorate the economic condition of tenants". It was thus a measure of agrarian reform and can truly be regarded as beneficial legislation. Mr. Jain's arguments for the respondent may have some force, but all that can be said is that there are two possible views about the question in dispute, one which is logical and in favour of the occupancy tenant is that which commended itself to the trial Judge. The other point of view has found favour with the lower appellate Court. It was said by Mr. Justice K. C. Das Gupta in the Supreme Court case *Satyanarayan v. Mallikarjun* (3), at page 141 that "in interpreting provisions of such beneficial legislation the Courts always lean in favour of that interpretation which will further that beneficial purpose of the legislation". It is the manifest purpose of the Act that occupancy tenants should be given full proprietary rights as against the landlords. It may be that the word "decree" is not mentioned in the preamble of the section but the purport and meaning of the beneficial measure cannot be regarded as uncertain. Even if "decree" is not mentioned along with "law, custom or usage" in the preamble of section 3, it cannot mean that the right of the occupancy tenant would be whittled down to conform to the subsisting decrees. It is not denied by Mr. Jain that Shama himself could not enforce any right against Tulsi Ram according to the clear provision of section 3(a). How can the plaintiffs then enforce the rights given to them by a decree passed in 1928 entitling them to redeem only a portion of the land under the occupancy tenancy?

A similar observation was made by their Lordships of the Supreme Court in *Madhya Pradesh Mineral Industry Association, Nagpur v. The Regional Labour Commissioner Central Jabalpur* (4). Speaking for the Court, Justice Gajendragadkar (as the Chief Justice then was) said at page 1071:—

"It is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to

(3) A.I.R. 1960 S.C. 137.

(4) A.I.R. 1960 S.C. 1068.

workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. If the relevant words are capable of two constructions preference may be given to that construction which helps to sustain the validity of the impugned notification; but it is obvious that an occasion for showing preference for one construction rather than the other can legitimately arise only when two constructions are reasonably possible not otherwise."

We are, therefore, of the view that Shama and Tusli Ram even if their rights may have become precarious still remained landlord and tenant respectively under the Punjab Act No. 8 of 1953, and the appellant falling within the definition of an 'occupancy tenant' came to be fully vested with proprietary rights of his landlord. In this view of the matter, this appeal must succeed and it is accordingly allowed. The judgment of the trial Court is restored and the suit of the plaintiffs dismissed. As the point for determination is not free from difficulty, we will make no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before S. B. Kapoor and H. R. Khanna, JJ.

MUNICIPAL CORPORATION OF DELHI,—*Petitioner*

versus

G. S. Mumick,—*Respondent*

Civil Revision No. 441-D of 1960

August 11, 1966

*Delhi Municipal Corporation Act (LXVI of 1957)—Ss. 124, 126 and 512—
Assessment of rateable value of property made by New Delhi Municipal*