

Phool Kanwar and others v. Baru Ram and others (S. S. Sodhi, J.)

55 years. This case is squarely covered by the Division Bench judgment of this Court in *K. K. Vaid v. State of Haryana* (2), wherein, following the law laid down by the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab* (3), it has been held that a Government servant cannot be retired from service prematurely on the basis of uncommunicated 'average' reports. The case of the petitioner is on stronger footing as he was not allowed to cross the Efficiency Bar with effect from 1st April, 1982, 1st April, 1983 and 1st April, 1984, which orders have now been quashed by allowing C.W.P. No. 26 of 1988.

(9) Consequently, C.W.P. No. 98 of 1988 is also allowed and the impugned order dated 2nd July, 1987, by which the petitioner was prematurely retired from service is quashed. The petitioner is accordingly reinstated in service and shall be entitled to all the arrears of salary and allowances, to which he would have been entitled had he not been retired from service prematurely in pursuance of the impugned order, with interest at the rate of 12 per cent per annum till the date of actual payment. The petitioner shall also be entitled to the costs of both these writ petitioners which are quantified at Rs. 500 in each case.

P.C.G.

Before : S. S. Sodhi, J.

PHOOL KANWAR AND OTHERS,—Petitioners.

versus

BARU RAM AND OTHERS,—Respondents.

Civil Revision No. 2562 of 1989.

23rd May, 1990.

Code of Civil Procedure, 1908—O. 8, rl. 10 & S. 115—Defendant proceeded ex-parte—Ex-parte order becoming final—Defendant, thereafter, cannot lead evidence in support of his case—Defendant has only a limited right of pointing out falsity or weakness of plaintiff's case.

Held, that a defendant who has been proceeded against *ex-parte* and is allowed to join the proceedings has a limited right of pointing

(2) C.W.P. No. 4180 of 1986 decided on 1st November, 1989.

(3) 1987 (2) S.L.R. 54.

out the falsity or weakness in the plaintiff's case by demonstrating that his witnesses were not speaking the truth or that the evidence led by the plaintiff was not sufficient to establish his case, but he cannot lead evidence on his own.

(Para 3)

Petition under Section 115 of Act V of 1908 CPC against the order of the Court of Shri R. K. Khanagwal, HCS, Sub Judge, Ist Class, Hansi, dated 22nd August, 1989 ordering that the defendants are entitled to lead their evidence and adjourning the case for 6th September, 1989, for DWs.

Claim :—Suit for declaration to the effect that the sale-deed dated 31st May, 1984 of specific khasra Nos. 42/5-2 measuring 5 Kanals 8 marlas through Jamabandi for the year 1982-83, situate in Village Molla, Tehsil Hansi, District Hissar registered on 31st May, 1984, executed by defendant No. 1 Baru Ram in favour of respondent Nos. 2 to 11, is against facts, and law, null and void and not binding on the rights to plaintiffs and proforma respondents, because Baru Ram defendant No. 1 has no right to alienate the specific khasra Nos. without partition and bearing khewat No. 114, Khatauni Nos. 192 to 194 and Khasra Nos. 221/0-14, 30/7-8-0, 30/16-712, 17/8-0, 25/1-2-12, 42/5-2-58, 30/24-8-0, 48/1-3, 48/7-8-0, 13/7-12, 4/0-12, 30/4-8-0, 5/8-0, 14/8-0, 48/8-7-12, total 95 Kanals 14 marlas, in view of Jamabandi for the years 1982-83, situate at village Molla, Tehsil Hansi, District Hissar. Plaintiffs and proforma defendants are cosharers with defendant No. 1 Baru Ram. Further suit for injunction to the effect that defendant Nos. 2 to 11 be restrained from interfering/in any way on any part and taking possession of aforesaid total land 5 Kanals 8 Marlas and further getting mutation sanctioned in their names or alienating mortgaging, leasing the specific khasra Nos. 42/5/2, total 5 Kanals 8 Marlas, situated as Village Molla, Tehsil Hansi, District Hissar, by way of oral and as well documentary evidence.

*Claim in revision : For reversal of the order of lower court.
Dated the 23rd May, 1990.*

R. L. Sarin, Sr. Advocate, Jayshree Thakar, Advocate and Ashish Handa, Advocate, for the Petitioners.

Rameshwar Malik, Advocate, for the Respondent.

ORDER

S. S. Sodhi, J. (Oral)

(1) Where an order directing that the defendant be proceeded against *ex parte* becomes final and the defendant subsequently appears and wants to join in the proceedings, can he be permitted

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to lead evidence and examine witnesses ? Herein lies the controversy raised.

(3) The defendant-Baru Ram, was proceeded against *ex parte* and this order became final against him. Later, when he appeared in court, the trial court not only permitted him to participate in the proceedings, but also to lead evidence in support of his case. In doing so, it purported to follow the judgment in *Radhamoni Padhiri v. Tanqudu Jaganatham and another* (1), where it was held that the defendant who had been proceeded against *ex parte* and was allowed to join the proceedings was not only entitled to cross-examine the witnesses of the plaintiff, but also to lead evidence in support of his case.

(3) The view of the Supreme Court on this point is, however, to the contrary and must therefore prevail, In *Modula India v. Kamakhya Singh Deo* (2), it was held that when the defence of a defendant is struck off, the defendant is entitled to cross-examine the plaintiff's witnesses and also to address arguments, but he cannot be permitted to adduce evidence in support of his case. In other words, his right was limited to pointing out the falsity or weakness in the plaintiff's case by demonstrating that his witnesses were not speaking the truth or that the evidence led by the plaintiff was not sufficient to establish his case, but he cannot lead evidence on his own.

(4) Such thus being the settled position in law, there can be no escape from the conclusion that the trial court clearly fell in error in holding the defendant entitled to lead evidence to controvert that led by the plaintiffs. The impugned order of the trial court is consequently modified accordingly.

(5) This revision petition is thus accepted with costs. Counsel fee Rs. 300.

R.N.R.

(1) A.I.R. 1978 Orissa 209.

(2) 1988 (2) R.C.R. 530.