

REVISIONAL CIVIL

*Before M. R. Sharma, J.*DARSHAN KUMAR AND ANOTHER—*Plaintiffs-Petitioners.**versus*RAGHUNANDAN SHARMA—*Defendant-Respondent.*

Civil Revision No. 522 of 1977

March 22, 1978.

Code of Civil Procedure (5 of 1908)—Section 47(2)—Code of Civil Procedure Amendment Act (104 of 1976)—Section 97(2) and (3)—General Clauses Act (10 of 1870)—Section 6—Conversion of a suit into execution proceedings—Deletion of section 47(2) by the Amending Act—Effect of—Old section—Whether continues to govern the proceedings.

Held that a plain reading of sub-section (2) of Section 97 of the Code of Civil Procedure (Amendment) Act 1976 shows that the Legislature has saved the operation of section 6 of the General Clauses Act 1870 while laying down that old Act would continue to govern some of the proceedings. The obvious object of saving the application of section 6 of the General Clauses Act was that the substantive rights of the parties should not be put in jeopardy because of the amendment of the status which was procedural in nature. Under section 47 of the Code as unamended, a party to the litigation could have either its suit tried as an execution proceeding or Vice-versa. This was a substantive right and not a mere right relating to procedure and is clearly saved under section 6 of the General Clauses Act.

(Paras 3 and 4)

Petition under Section 115 C.P.C. for the revision of the order of Shri N. K. Jain, H.C.S. Sub-Judge 1st Class, Gurgaon, dated 4th March, 1977, rejecting the application.

H. L. Sarin Sr. Advocate with M. L. Sarin Advocate, for the petitioners.

M. S. Rakkar, Advocate, for the respondent.

ORDER

M. R. Sharma, J. (Oral)—

(1) The property in dispute belonged to one Vishnu Datt Aggarwal. On September 2, 1964, he obtained an order of ejectment against Raghunandan Sharma, defendant-respondent. It appears that this order was not put into execution. On July 7, 1975, the

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petitioner purchased this property from the said Vishnu Datt Aggarwal. On September 1, 1976, he filed a suit for possession of this property on the ground that the tenancy of Raghunandan Sharma defendant having come to an end, he was a trespasser. In the written statement a plea was raised that the petitioner should have executed the earlier order of ejection and that the suit for possession was not maintainable. On November 30, 1976, the petitioner filed an application before the learned trial Court that suit under section 47(2) of the Code of Civil Procedure as unamended be converted into an execution petition. This prayer was turned down by the learned trial court on the ground that sub-section (2) of old section 47 of the Code of Civil Procedure had then been deleted and it was not upon him to convert the suit into execution proceedings. This order passed by the Court below is being challenged in this petition.

(2) After hearing the learned counsel for the parties, I am of the view that impugned order cannot be allowed to stand. Before I give detailed reasons for coming to this conclusion, I would like to notice the relevant provisions of the Code of Civil Procedure (Amendment) Act, 1976—

“97—Repeal and savings

- (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.
- (2) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897)—

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- (3) Save as otherwise provided in sub-section (2), the provisions of the principal Act, as amended by this Act, shall apply to every suit, proceeding, appeal or application

pending at the commencement of this Act or instituted or filed after such commencement, notwithstanding the fact that the rights, or cause of action, in pursuance of which such suit, proceeding appeal or application is instituted or filed, had been acquired or had accrued before such commencement.”

(3) A plain reading of sub-section (2) quoted above shows that the Legislature has saved the operation of section 6 of the General Clauses Act while laying down that the old Act would continue to govern some of the proceedings. The obvious object of saving the application of section 6 of the General Clauses Act was that the substantive rights of the parties should not be put in jeopardy because of the amendment of the statute which was procedural in nature. Under section 47 of the Code as unamended a party to the litigation could either have its suit tried as an execution proceeding or *vice versa*. This was a substantive right and not a mere right relating to procedure. It was clearly saved under section 6 of the General Clauses Act, which reads as under :—

“6. *Effect of repeal.*

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any

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such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

(4) The learned counsel for the respondent has placed reliance on sub-section (3) of sub-section 97 of the Amendment Act, 1976 noticed above and has argued that but for the matters expressly saved in sub-section (2) of section 97 of the Act, the new Code will apply to all the suits and proceedings. According to him, since sub-section (2) of section 47 of the unamended Code has been deleted, it was not open to a litigant to have his suit tried as an application even though the suit had been filed earlier than the coming into force of the Amendment Act, 1976, which came into force on February 1, 1977. I find no merit in the contention raised by the learned counsel. The opening words used in sub-section (3) of section 97 are “save as otherwise provided in sub-section (2)”. These words clearly imply that sub-section (2) shall dominate the field and sub-section (3) would only apply to those cases to which sub-section (2) is not applicable. As noticed earlier, substantive rights of the litigants have been preserved by the Legislature under sub-section (2) of section 97 by expressly laying down that the provisions of this statute would not affect the generality of the provisions of section 6 of the General Clauses Act. Even though we have to adopt a somewhat circuitous route, yet we reach the same destination. In other words, section 6 of the General Clauses Act enjoys precedence over the provisions of section 97 of the Amendment Act. In this view of the matter, the petitioner was within his right to request the learned trial court to convert his suit into an execution proceeding. By declining this prayer the learned trial Court has committed an error which resulted in grave miscarriage of justice. Apparently, if the suit filed by the petitioner was held as not competent on the ground that he could execute the earlier order and obstacles were raised in his way when he wanted to have his suit tried as an execution proceeding he would be left without a remedy to secure the property which he had purchased for valuable consideration. It has often been said that procedural laws are meant to subserve the ends of justice and not to thwart it. I see no reason to ignore this well settled principle in this case.

(5) For the reasons mentioned above, I allow this petition, set aside the order passed by the learned trial Judge and direct him to

allow the petitioner to have his suit converted into an execution proceeding.

(6) The parties through their counsel are directed to appear before the learned trial Court on April, 24, 1978.

N. K. S.

Before R. N. Mittal, J.

BATALA POPULAR WOOD WORKS CO-OPERATIVE INDUSTRIAL SOCIETY LTD. AND OTHERS—*Petitioners.*

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES, PUNJAB, CHANDIGARH, ETC.,—*Respondents.*

Civil Writ No. 436 of 1978

March 23, 1978.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 18 and 26(1A)—Punjab Co-operative Societies Rules 1963—Rules 20, 23, Appendix 'C', Clause (1) & (4)—Elections to the Managing Committee of a Central Society—Zonal lists changed without notice to voters—Election on the basis of such lists—Whether liable to be set aside.

Held that preparing of proper electoral rolls is necessary for holding elections. Clause 4(2) of Appendix 'C' to the Punjab Co-operative Societies Rules 1963 says that the zonal lists of the voters shall be prepared if necessary by the Manager in accordance with the directions issued by the Registrar from time to time. For constituting zones and preparing the zonal lists it is desirable that notices should be issued to all members of the Central Society and citation published in at least two newspapers having large circulation in the area. If any member has any grievance against the proposed zonal list he can raise objections before the officer concerned and the mistake can be rectified. If this is done, then the result of the lapse on the part of the Officer can be that proper list of voters may not be prepared and a large number of societies may not be able to exercise the right to vote. In case any representative of such societies wants to contest the election, he is deprived of it. An election held on the basis of incomplete voters lists cannot be said to be a proper election and is liable to be set aside.

(Paras 5 and 6)