

The Indian Law Reports

LETTERS PATENT APPEAL

Before S. S. Dulat and A. N. Grover, J.J.

KISHNA ALIAS KISHAN SINGH,—*Appellant*

versus

MATA DIN AND OTHERS,—*Respondents*

Letters Patent Appeal No. 109 of 1962.

Patiala and East Punjab States Union Abolition of Biswedari Ordinance, 2006 Bk.—Ss. 8 and 9—Partition Commissioner—Whether can determine disputes relating to title inter se between occupancy tenants.

1965

February, 10th.

Held, that there is no provision in the Patiala and East Punjab States Union Abolition of Biswedari Ordinance, 2006 Bk., which confers any power on the Partition Commissioner or the Financial Commissioner on appeal to fix the shares or adjudicate upon the rights, title and interest of the occupancy tenants *inter se*, if there is dispute between them. Merely because the parties other than the landlord and the occupancy tenant have to be heard under section 8 of the Ordinance by the Partition Commissioner for giving a decision with regard to a holding which is defined by section 2(1)(f) of the Ordinance to mean a share or portion of an estate held by one landlord or jointly by two or more such landlords, it cannot be held that the Partition Commissioner was given the power to decide dispute relating to title between the occupancy tenants *inter se*.

Appeal under clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice Shamsheer Bahadur, dated the 5th day of February, 1962, passed in R. S. A. No. 1435 of 1959, affirming with costs the decree of Shri Chetan Dass Jain, Additional District Judge, Sangrur, and Narnaul, Camp at Narnaul, dated the 13th July, 1959, who modified the decree of Shri Raghbir Singh, Sub-Judge, 2nd Class, Narnaul, dated the 30th September, 1957.

R. N. SANGHI, AND INDER SINGH KARWAL, ADVOCATES, for the Appellant.

DALIP CHAND GUPTA, ADVOCATE, for the Respondents.

JUDGMENT

The following judgment of the court was delivered by—

Grover, J.

GROVER, J.—In this appeal under clause 10 of the Letters Patent it is common ground that after the findings which have been recorded by the Courts below, the only question which requires determination and which has been urged before us is whether a Partition Commissioner under the Patiala and East Punjab State Union Abolition of Biswedari Ordinance, 2006 Bk., (to be called the Ordinance) can determine disputes relating to title *inter se* between occupancy tenants. The facts are not in dispute and are set out fully in the judgment of the learned Single Judge and need not be recapitulated. It would suffice to mention that by virtue of a decree passed in favour of the appellant on 8th Poh., 1989 Bk., he was held to be entitled to one-third share of land consisting of two parcels measuring 128 *bighas* 7 *biswas* and 17 *bighas* 5 *biswas*. There was another disputed property which was land measuring 146 *bighas* 4 *biswas* but that was, according to the findings given by the learned District Judge, not the subject-matter of litigation nor did it form a part of the property in respect of which the aforesaid decree was granted. Subsequently, however, the Partition Commissioner appointed under the Ordinance sanctioned mutations in respect of that land also in favour of the appellant Kishna and Mata Din in proportion of one-third and two-third shares.

According to the appellant, the Partition Commissioner appointed under the Ordinance had the power and the jurisdiction to determine the rights, title and interest not only of the landlords and the occupancy tenants but also of the occupancy tenants *inter se* and thus the entries made pursuant to the orders of the Partition Commissioner were final. In the suit out of which the present appeal has arisen, the claim of Kishna was based on those entries.

After considering the relevant provisions of the Ordinance, the learned Single Judge came to the conclusion that the Partition Commissioner was not competent to deal with a dispute *inter se* between the occupancy tenants. The preamble states that a machinery is being set up for settling all disputes between occupancy tenants and landlords. Clauses (f) and (h) of section 2(1) define the words

“holding” and “landlord”, respectively. Section 8(1) provides that the Partition Commissioner shall enquire and determine whether or not any holding in any village or estate is a holding within the meaning of the Ordinance. Sub-section (2) provides that before holding the enquiry the Partition Commissioner shall cause to be published in the village or estate a notice requiring all persons whether as landlords or occupancy tenants otherwise claiming an interest in the said holding to file before him a statement of their interests. According to sub-section (3), the Partition Commissioner has to hear the parties and give his decision in writing. Section 9 makes it quite clear what the Partition Commissioner has to determine and declare the respective shares of the landlord and the occupancy tenant in the holding in the manner indicated in the section. Section 10 gives an option to the occupancy tenant to acquire the share of the landlord. According to section 12, where the occupancy tenant elects to purchase the landlord’s share of the holding the Partition Commissioner has to determine the amount of compensation payable to the landlord.

Kishna alias
Kishan Singh
”
Mata Din
and others
—
Grover, J.

The learned counsel for the appellant has relied largely on sub-section (2) of section 8 and has pointed out that all the parties interested apart from the landlord or the occupancy tenant have to be given a notice and the Partition Commissioner has to hear them as provided by sub-section (3) of section 8 before giving any decision about the holding. It is further pointed out that according to the other provisions contained in the Ordinance, the decision of the Partition Commissioner subject to any decision by the appellate authority, namely, the Financial Commissioner, would be final. But the declaration of shares is to be made under section 9 and that provides only for declaration of shares of occupancy tenant and landlord in a holding. There is no provision in the Ordinance which confers any power on the Partition Commissioner or the Financial Commissioner on appeal to fix the shares or adjudicate upon the rights, title and interest of the occupancy tenants *inter se*, if there is a dispute between them. It is not possible, therefore, to accede to the contention of the learned counsel for the appellant that merely because the parties other than the landlord and the occupancy tenant had to be heard under section 8 by the Partition Commissioner for giving a decision with regard to a holding which is defined by

Kishna alias
Kishan Singh

v.
Mata Din
and others

Grover, J.

section 2(1) (f) to mean a share or portion of an estate held by one landlord or jointly by two or more such landlords, the Partition Commissioner was given the power to decide dispute relating to title between the occupancy tenants *inter se*. There seems to be no error whatsoever in the decision given by the learned Single Judge on the aforesaid point.

In the result, the appeal is dismissed but in the circumstances the parties are left to bear their own costs.

B.R.T.

CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J

SHERU,—*Petitioner*

versus

SARWAN SINGH AND OTHERS,—*Respondents*

Criminal Miscellaneous No. 579 of 1964.

March, 11th.

1965

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 66—Panchayat convicting a person for an offence under S. 447, I.P.C.—Whether can order the accused to deliver back possession to the complainant—Code of Criminal Procedure (Act V of 1898)—S. 522—Whether applicable—Constitution of India (1950)—Art. 227—High Court—Whether can re-appraise evidence.

Held, the provisions of section 522 of the Code of Criminal Procedure, 1898, do not strictly apply to the proceedings before the Gram Panchayat but the Panchayat can order the restoration of the possession of the immovable property from which the complainant has been forcibly dispossessed as such an order is essentially an order in accordance with justice, equity and good conscience and the Panchayat can pass such an order under section 66(1) of the Punjab Gram Panchayat Act. The object of such a direction is to prevent any person gaining wrongful possession of a site by his unlawful and forcible acts. It is an essential principal of all laws that a person in peaceful possession of a site should be protected against forcible dispossession and justice requires that a person, who flouts the law and relies on physical force and dispossesses a person in peaceful possession, should be made to restore back that possession. Section 522 of the Code of Criminal Procedure embodies this principle of justice, equity and good conscience, and even though section 522 may not be applicable to the proceedings before the Panchayat, there is nothing to prevent the