

necessity of taking all the observations of the Supreme Court about the existence of another condition as discussed above. In view of the observations of the Supreme Court Sections 48 (audit), 49 (inspection of societies) 50 (enquiry by the Registrar), 51 (inspection of books of the indebted societies) of Chapter VIII of the Punjab Act have not been taken note of in the aforesaid Single Bench judgments.

(14) If some illegality of fraud, embezzlement or shortage is found during the proceedings under the aforesaid Sections and in-criminating material so collected is made the sole basis in its claim by the society, then of course, it can be said that Section 54 would apply. But if the facts so collected during any such proceedings as contemplated under the aforesaid Sections are not put in the claim made by the society, then Section 55 would apply. For instance, if the society seeks reference and during arbitration proceedings, it relies upon some auditor inspection report, or some other enquiry report by way of piece of evidence alongwith the other evidence, then it cannot be said that in that eventuality, the matter will be coverable only under Section 54 of the Act. If such view was contemplated in the aforesaid two judgments of this Court, then they are contrary to the observations of the Supreme Court in *Pentakota Sriramula's Case* (Supra).

(15) Though we have expressed some doubt about the correctness of the aforesaid two judgments of this Court, yet as per the discussion made above we shall refrain from doing so as the same is not needed for the just decision of the case in hand. The observations of the Supreme Court in *Pentakota Sriramula's case* (supra) are fully applicable to the facts of the case in hand and we hold that reference for arbitration proceedings was rightly claimed by the society and ordered so by the Registrar in terms of Section 55/56 of the Punjab Act.

(16) Resultantly, for the elaborate reasons recorded above, the writ petition is ordered to be dismissed with costs. The costs are quantified at Rs. 1,000 to be paid to respondent No. 4 only.

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R.N.R.

Before : G. R. Majithia, J.

RAJ KUMAR,—Appellant.

versus

DHARAM SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 476 of 1979.

25th November, 1991.

(a) Code of Civil Procedure, 1908—O. 2. rl. 2—Suit for declaration that decree of civil court and order of purchase under S. 18 of

*Punjab Security of Land Tenures Act, 1953 would not bind plaintiff—Disputed land surplus area—Allotted to tenant as re-settled tenant—Order set aside by Collector as mandatory provisions of rls. 20B & 20C not complied with—Case remanded—Till decision by Circle Revenue Officer possession of plaintiff not to be disturbed—Effect—Allotment stood cancelled—Plaintiff is not resettled tenant and had no right to hold disputed property—No right to maintain suit—Plaintiff to establish existence of a civil right which had been violated.*

*Held.* that the resultant effect is that the plaintiff is not a re-settled tenant and he acquired no right to hold the disputed property and thus he has no *locus standi* to maintain the suit. To sustain an action in the Civil Court, the plaintiff must establish the existence of a civil right which has been violated or which is threatened. In the present case, no right, much less a legal right, has been even plausibly propounded.

(Para 7)

*(b) Punjab Security of Land Tenure Rules, 1956—Rls. 20B & 20C—Are mandatory—Non-compliance of provisions renders allotment invalid.*

*Held.* that the Collector found that the Circle Revenue Officer had violated the provisions of Rules 20-B and 20-C of the Punjab Security of Land Tenures Rules by making allotment to the plaintiff. The compliance of these rules was mandatory. Non-compliance of these rules rendered the allotment invalid.

(Para 7)

*(c) Punjab Security of Land Tenures Act (10 of 1953)—Ss. 18 & 25—Order of purchase under S. 18—Cannot be assailed in civil court in view of jurisdictional bar of S. 25.*

*Held.* that the order of purchase dated December 18, 1973 could not be assailed in the civil court in view of the jurisdictional bar created by S. 25 of the Act. The contesting defendant, notwithstanding the fact that the Civil Court's decree in his favour was found to be invalid had valid order of purchase in his favour, the validity of which was not doubted by the civil court, had a right to enter into possession as a tenant pursuant to that order.

(Para 7)

*Regular Second Appeal from the decree of the Court of Shri Krishan Kant Agarwal, Additional District Judge Gurgaon, dated 18th October, 1978 reversing that of the Court of Shri B. P. Jindal, Sub-Judge, 1st Class, Patna dated the 27th September, 1976 and passing a decree for declaration in favour of the plaintiff (now represented by his L.R's Dharam Singh etc.) against the defendants to the effect that the plaintiff Sardar Singh was a tenant upon the*

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*land bearing numbers—*

*9 (6.05), 19 (8-0), 20 (4-12) & 22 (0-10) (0-10)  
total measuring 19 Kanals 7 Marlas situated in village Pingore, Tehsil*

*Palwal, District Gurgaon and that the decree of the Civil Court (Copy Ex. D5) passed by Sub-Judge, Palwal dated 28th April, 1973 is ineffective against the plaintiff and ordering that so far as remaining reliefs are concerned, the suit shall stand dismissed and leaving the parties to bear their own costs throughout.*

*Claim:—Suit for declaration to the effect that the plaintiff is the tenant of the land 24 K 12 M in Khewat No. 87 (Khatoni No. 149 min Rect. No. 110 Killa No. 9 (6-5), 19 (8-0), 20 (4-12), 22 (5-15) at Village Pingore.*

Mr. H. L. Sarin, Sr. Advocate with Mr. Ashish Handa, Advocate with him, for the Petitioner.

Mr. C. B. Goel, Advocate with Mr. R. C. Chaudhan & Mr. Rajinder Goel, Advocate, for the Respondent.

#### JUDGMENT

G. R. Majithia, J.

(1) The unsuccessful defendant has come up in regular second appeal against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge, whereby it decreed the suit filed by deceased plaintiff Sardar Singh (now represented by his legal representatives Dharam Singh etc.) for declaration to the effect that the decree of the Civil Court dated April 28, 1973 (copy Ex. D-5) and the order of purchase passed by the Assistant Collector, I Grade, Palwal on December 18, 1973 (copy Ex. D-4) would not bind him.

(2) The facts:—

(3) The disputed land was owned by defendants No. 2 to 5 (respondents No. 4 to 7 in second appeal) (hereinafter the non-contesting defendants); that Sardara Singh deceased plaintiff, the predecessor-in-interest of respondents No. 1 to 3 (hereinafter to be referred to as the plaintiff) was an ejected tenant; that he was to be resettled on some surplus area; that Circle Revenue Patwari, Palwal,—*vide* his order dated September 1, 1972 (copy Ex. D-9), allotted the disputed land to him and he was put in possession thereof; that an entry to this effect was also made in the Daily Diary; that defendant No. 1 appellant (hereinafter to be referred to as the contesting defendant) filed a suit for declaration that he was a tenant in possession of the suit land under the non-contesting defendants; that the said suit was decreed,—*vide* judgment and decree (copies Ex. D-3 and D-5) by the civil Court on April 28, 1973. The contesting defendant thereafter filed a petition under Section 18 of the Punjab Security of Land

Tenures Act, 1953 (for short, the Act) in the Court of Assistant Collector, I Grade, Palwal and that petition was allowed by him,— *vide* order dated December 18, 1973 (copy Ex. D-4) and the plaintiff challenged the judgment and decree of the civil Court (Ex. D-3 and D-5) and the order of purchase dated December 12, 1973 (copy Ex. D-4) in the Civil Court on the ground that he was not bound by the same and his possession could not be disturbed.

(4) The contested defendant controverted the pleas in the plaint and this led to the framing of the following issues:—

- (1) Whether the plaintiff is in possession of the suit land as tenant under defendants No. 2 to 5 ? OPP.
- (2) Whether the decrees dated 28th April, 1973 and 18th December, 1973 are not binding on the plaintiff as alleged in the plaint ? OPP.
- (3) Whether the suit is not maintainable in the present form ? OPD.
- (4) Whether the court has no jurisdiction to try ? OPD.
- (5) Whether the suit has not been properly valued for purposes of court fee and jurisdiction ? OPD.
- (6) Relief.

(5) The trial Judge held that the plaintiff is in possession of the suit land as tenant but not under the non-contesting defendants; that the judgment and decree of the Civil Court dated April 28, 1973 were found to be collusive but the order of purchase passed by the Assistant Collector, I Grade, Palwal, on December 18, 1973, in favour of the contesting defendant could not be declared to be invalid in view of the provisions of Section 25 of the Act. Issue No. 2 was disposed of accordingly. Issues Nos. 3 to 5 were answered against the contesting defendant. On ultimate analysis, the suit was decreed.

(6) The first appellate Court on the same parity of reasoning affirmed the judgment and decree of the trial Judge.

(7) The view taken by the Courts below is unsustainable. The disputed land was surplus area of the non-contesting defendants. The plaintiff was allotted the land as a resettled tenant by the

Circle Revenue Officer. The landowners (the non-contesting defendants) challenged the order of the Circle Revenue Officer under which the plaintiff was resettled on the disputed land. The Collector,—*vide* his order dated July 25, 1974 (copy Ex. D-10) set aside the order of the Circle Revenue Officer dated September 1, 1972 resettling the plaintiff on the disputed land. The Collector found that the Circle Revenue Officer had violated the provisions of Rules 20-B and 20-C of the Punjab Security of Land Tenures Rules by making allotment to the plaintiff. The compliance of these rules was mandatory. Non-compliance of these rules rendered the allotment invalid. After setting aside the order of the Circle Revenue Officer, the Collector remanded the case with the directions that the Circle Revenue Officer will proceed afresh for determining the eligibility of the ejected tenant for resettlement. Till the decision by the Circle Revenue Officer, the plaintiff's possession was not to be disturbed. The allotment in favour of the plaintiff stood cancelled. He continued to remain in possession of the disputed land not as an allottee but pursuant to the direction of the Collector incorporated in his order and the Courts below are in error in observing that the plaintiff's right as a resettled tenant was protected by the Collector while setting aside the order of the Circle Revenue Officer. The order of the Collector does not indicate what has been suggested in the judgment of the first appellate Court. The plaintiff for reasons not apparent did not pursue before the Circle Revenue Officer and the latter did not comply with the directions contained in the Collector's order dated July 25, 1974. The terms of the order of the Collector, Ex. D-10, were violated by the Circle Revenue Officer presumably at the behest of the interested party, but did not want the eligibility of the resettled tenant to be determined after complying with the mandatory provisions of Rules 20-B and 20-C of the Punjab Security of Land Tenures Rules. The conduct of the Circle Revenue Officer in flouting the Collector's order deserves to be condemned the resultant effect is that the plaintiff is not a re-settled tenant and he acquired no right to hold the disputed property and thus he has no *locus standi* to maintain the suit. To sustain an action in the Civil Court, the plaintiff must establish the existence of a civil right which has been violated or which is threatened. In the present case, no right, much less a legal right has been even plausibly propounded. The order of purchase dated December 18, 1973 (Ex. D-4) could not be assailed in the Civil Court in view of the jurisdictional bar created by Section 25 of the Act. The contesting defendant, notwithstanding the fact that the Civil Court's decree in his favour was found to be invalid, had a valid order of purchase in his favour, the validity of which was not

doubted by the Civil Court, had a right to enter into possession as a tenant pursuant to that order. Thus, the judgments and decrees of the Courts below are unsustainable.

(8) For the reasons stated above, the appeal succeeds, the judgments and decrees of the Courts below are set aside and the suit for declaration filed by the plaintiff is dismissed but with no order as to costs.

*J.S.T.*

*Before : G. R. Majithia, J.*

**KESAR DEVI (SMT.) AND ANOTHER,—Appellants.**

*versus*

**SURAJ BHAN,—Respondent.**

*Regular Second Appeal No. 1294 of 1984.*

25th November, 1991.

*Hindu Minority and Guardianship Act, 1956—S. 8—Punjab Security of Land Tenures Act (10 of 1953)—S. 9—Powers of natural guardian—Fetters on such powers—Right of minors to avoid act of guardian—Provisions of Punjab Security of Land Tenures Act—Such provisions protecting position of tenant—Effect of such provisions on the provisions of Minority and Guardianship Act.*

*Held*, that Hindu Minority and Guardianship Act is a special enactment. S. 8 of this Act gives statutory recognition to some of the powers which used to be enjoyed by the natural guardian under the old Hindu Law and imposes two important restrictions on him in dealing with the immovable property of the minor. The first restriction is that the guardian can in no case bind the minor by a personal covenant. The second restriction is that he shall not mortgage or create a charge or transfer by sale, gift, exchange or otherwise or even lease out the property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority, without the previous permission of the Court. Special protection granted to the minor under this Act cannot be whittled down or eroded by any other special enactment. S. 9 of the Punjab Security of Land Tenures Act furnishes grounds for eviction of a tenant and has to be so read with the beneficial provisions of S. 8 of the Hindu Minority and Guardianship Act are not nullified. What has been granted under the special Act for protection of the minor's interests cannot be withdrawn by another special statute. This cannot be the intention of the legislature under S. 9 of the Punjab Security of Land Tenures Act. What has been forbidden