

(2019) 11 SHI CK 0087

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 44 Of 2009

Arvind Singh And Others

APPELLANT

Vs

Lal Singh

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Himachal Pradesh Land Revenue Act, 1953 — Section 14

Himachal Pradesh Tenancy And Land Reforms Act, 1972 — Section 104, 104(3)

Citation : (2019) 11 SHI CK 0087

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : B.S. Thakur, Romesh Verma

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Having suffered by two concurrent judgments and decrees, the defendants are in second appeal.

2. The appeal was admitted on 27.08.2009, on following substantial questions of law:-

"1. Whether proprietary rights under H.P. Tenancy and Land Reforms Act can be conferred by Assistant Collector 2nd Grade?

2. Whether the Ard Salidaran (Manager) has right to induct tenant over the suit land?

3. When the order of mutation passed by the Revenue Officer is under challenge and the appeal is pending before the Appellate Revenue Court, can the same be declared legal and valid by the Civil Court during the pendency of the appeal?"

The parties hereinafter are being referred as they were before learned trial Court.

3. Brief facts for adjudication of the appeal may be noticed hereinafter:-

3(i). Jamabandi for the year 1970-71 (Ext.D-4), recorded plaintiff's possession over the suit land as non- occupancy tenant, on payment of 1/3rd of the produce under

Sh. Lal Chand & Sohan Lal-the Ard Salidarans (Managers).

Shri Kishore Chand, Madan Lal etc. were recorded as owners of the suit land.

3(ii). In Jamabandi for the year 1992-93 (Ext.P-2), suit land was recorded in the ownership of Kishori Lal and others. Plaintiff was recorded as non-occupancy tenant on payment of 1/4th of produce under Ajmer Singh etc.- Ard Salidaran (Managers).

3(iii). On 18.01.1996, mutation No.44 (Ext.P-1) was attested, conferring proprietary rights over the suit land in favour of the plaintiff. The attestation thereof records the fact that owners of the suit land were not present despite repeated opportunities granted to them.

3(iv). The conferment of proprietary rights on the plaintiff was incorporated in the remarks column of Jamabandi for the year 1992-93. In Jamabandi for the year 1997-98 (Ext.D-2), name of the plaintiff thereafter was recorded as owner in possession over the suit land measuring 0-21-42 hectares, comprised in Khasra No.370, Mohal Nathoon, Mauja Garli, Tehsil Dehra, District Kangra, H.P.

3(v). Alleging interference over the suit land by the defendants, suit was filed by the plaintiff on 28.05.1999, seeking permanent prohibitory injunction for restraining the defendants from interfering in his exclusive ownership and possession over the suit land or in the alternative, in case, defendants forcibly occupy any portion of the suit land during the pendency of the suit, then a decree for possession was also prayed for.

3(vi). Written statement was filed by the defendants contending that mutation No.44 could not be attested in favour of plaintiff by Assistant Collector, 2nd Grade; plaintiff was not in possession over the suit land rather defendants were in possession of suit land as Ard Salidarans((Managers) and prior to this, their predecessor Duni Chand was in possession over the suit land as Ard Salidaran (Manager); therefore, decree for permanent prohibitory injunction could not be granted in favour of plaintiff.

3(vii). Defendants also filed their counter claim, challenging the conferment of proprietary rights in favour of the plaintiff under mutation No.44, dated 18.01.1996, attested under the Provisions of H.P. Tenancy and Land Reforms Act. After the filing of the civil suit, the defendants challenged mutation No.44 before the Revenue Courts. Appeal was preferred by them under Section 14 of H.P. Land Revenue Act before learned Collector. All the original owners of the suit land, i.e. Sh. Jadish Chand, Madan Lal etc. were impleaded as respondents in this appeal alongwith the present plaintiff.

3(viii). The mutation was challenged on the ground:- firstly that the same was

sanctioned by Assistant Collector, 2nd Grade, who was not competent to sanction it and secondly that plaintiff was not the tenant under the original owners but he was inducted as tenant as by Ard Salidaran (Manager), therefore, proprietary rights over the suit land could not be conferred upon him. Learned Collector vide order dated 24.09.2001 (Ext.P-6) dismissed the appeal. It was observed that the defendants were served the notice before attestation of mutation but they chose to remain absent on the day of attestation of mutation. It was also observed that the dispute raised in the appeal before the Collector was already raised by the defendants before the Civil Court and therefore, the findings of Civil Court will be binding on the Revenue Court.

3(ix). Against dismissal of the appeal by the Collector the defendants preferred Revision Petition. The Deputy Commissioner, exercising the powers of Commissioner, dismissed this Revision Petition vide order dated 10.10.2002 (Ext.X).

3(x). Learned trial Court held the plaintiff to be owner in possession over the suit land and accordingly decreed the suit. The counter claim preferred by the defendants was dismissed. The defendants were restrained from interfering in the ownership and possession of the plaintiff over the suit land. The first appeal preferred by the defendants was also dismissed by learned First Appellate Court.

Aggrieved against the above judgments and decrees, passed by learned Courts below, the instant second appeal has been preferred by the defendants.

4. I have heard Mr. B.S. Thakur, learned counsel for the appellants/defendants and Mr. Romesh Verma, learned counsel for the respondent/plaintiff and gone through the record.

Substantial Question of Law No.1.

4(i). Learned counsel for the defendants/appellants contended that the mutation No.44 conferring proprietary rights under the H.P. Tenancy and Land Reforms Act cannot be attested by Assistant Collector, 2nd Grade and that this could have been done only by the Assistant Collector, 1st Grade. This contention, no doubt, has force. However, at the same time, it cannot be loss sight of the fact that under Section 104 of H.P. Tenancy and Land Reforms Act, conferment of proprietary rights over non-occupancy tenant is automatic. In this regard, reference can profitably be made to the decision rendered by this Court in 2016 Latest HLJ 833, titled Asif

Beg and another versus Estate Officer/Station Commander, decided on 20.06.2016. Relevant paras of the said judgment are reproduced as under:-

"31. It appears that mandate of Section 104 (3) of the HP Tenancy Act is that the moment the Act has come into force, all rights of the landowners are extinguished and a person who is in possession of the land as non-occupancy tenant, steps into the shoes of an owner and becomes the owner. Thus, it is automatic and there is no question of following any mechanism. May be the

Tenancy Rules provide for following any mechanism, but that is only for making entries in the revenue records. It does not mean that in case an entry is not made or mutation is not effected/recorded, the said person is not the owner.

32. This Court in a case titled as Daulat Ram and ors. Versus State of Himachal Pradesh and ors., reported in 1979 Shim. L.C. 215, held that a person recorded as a non-occupancy tenant has to reap the fruits. Further held that the State cannot take a plea that the writ petitioners were not tenants and the revenue record is wrong because once the tenants are so recorded, by operation of law, they become the owner of the land. It is apt to reproduce relevant portions of paras 15 and 23 of the judgment herein:

"15.Therefore, from that date the ownership rights vested free from all encumbrances on the persons who were so recorded as tenants under the landowners or for the matter of that the State Government in that land. Therefore, the plea taken up by the Respondents that they were not the tenants is wholly incorrect because they cannot set up this case when they are so recorded, and once they are so recorded they become the owner of the land by virtue of the operation of law and they actually became owners with effect from the date of the publication of the rules.

xxx xxx xxx

23. I have already quoted Subsection (3) of Section 104 of the Act. Under the provision of this Subsection, the rights of the landowner in the land held by a tenant shall stand extinguished and his such rights, title and interest shall vest in the tenant free from all encumbrances created by the landowner with effect from 1101973 on payment of compensation. Therefore, the provision of law does not leave any room for doubt that a person who is entered as a tenant he is to become the owner of the land with effect from 1101973 on payment of compensation or from the date of the publication of the rules, as already stated above. So, there is no question of laying any condition or imposing a letter on the rights of ownership. The lights which are to vest they are without any fetters and law enjoins to confer absolute ownership in the land. Therefore, if any fetter is laid that would be in contravention of this statutory provision, and any such condition which is against the statutory provision would be void."

33. In the cases titled as Shri Bishambhar Nath versus Shri Hari Chand and others, reported in 1993 (3) S.L.J. 2906; Sant Ram versus Jash Ram, reported in 1995 (3) S.L.J. 2510; and Jethu through K. Guddi and others versus Gobind Singh, reported in 1995 (4) S.L.J. 3031, it has been held that the proprietary rights stand conferred upon the tenants by operation of law. It is apt to reproduce para 27 of the judgment in Jethu's case (supra) herein:

"27. Thus, on the basis of the aforesaid circumstances examined during the trial both the Courts below acted illegally in ignoring the legally competent evidence supporting the defendants' plea of tenancy as claimed by them. The defendants having been held to be in occupation of the suit land as tenants since 195455, till

date, accordingly, under Section 104 of the H.P. Tenancy and Land Reforms Act the proprietary rights in respect of the suit land stood conferred upon them and they have become owners of the same by operation of law."

34. In the case titled as Mohar Singh versus Manju Devi & others, reported in 1997 (1) S.L.J. 304, this Court has held that the conferment of proprietary rights under HP Tenancy Act is automatic and by operation of law. It is apt to reproduce relevant portion of para 11 of the judgment herein:

"11.Needless to point out here that after coming into force of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, the conferment of proprietary right is automatic and by operation of law. Rest of the matter is procedural as required under the Act and the rules framed thereunder."

35. This issue stands clinched by the Apex Court in Civil Appeal No. 5424 of 1998, titled as State of Himachal Pradesh versus Chander Dev, wherein it has been held that conferment of the proprietary rights is automatic. It is apt to reproduce relevant portion of the judgment herein:

".....From the above provisions, it is clear that all rights, title and interest of a landowner shall be extinguished and all such rights, title and interest shall, with effect from the date to be notified by the State Government in the Official Gazette, vest in the tenant free from all encumbrances."

36. The Apex Court in the case titled as Tarsem Lal and others versus Ram Sarup and others, reported in 2014 AIR SCW 2886, held that a tenant becomes owner on enforcement of Act. It is apt to reproduce para 13 of the judgment herein:

"13. As per the aforesaid provision, all right, title and interest including a contingent interest of a land owner other than the land owner entitled to resume land under subsection (1) shall be extinguished and all such rights, title and interest in respect of the land in question vest in the tenant, i.e. original plaintiff, free from all encumbrances from the date the Act came into force. The Act was published in the Official Gazette on 21st February, 1974 vide Act No.8 of 1974. What is not in dispute is that the original plaintiff became owner of the suit land by operation of law and continued to enjoy all the rights including right of irrigation from the common source which was in possession of the original landlord."

37. Thus, it is accordingly held that the conferment of the proprietary rights is automatic, by operation of law."

It is admitted case that plaintiff was recorded as non-occupancy tenant in possession over the suit land on payment of produce, therefore, in view of law extracted above, conferment of proprietary rights in his favour under the Act *ibid*, was automatic. It is settled law that mutation by itself does not confer or create any title or interest over the suit land. This only records a fact in the revenue records. Therefore, the mere fact that mutation was attested by Assistant Collector, 2nd Grade and not by Assistant Collector, 1st Grade, will not

divest the plaintiff's title over the suit land. The substantial question of law No.1 is answered accordingly.

4(ii). Substantial Question of Law No.2.

It is not in dispute that the defendants were not the original owners of the suit land. Suit land was owned by Kishori Lal, Madan Lal etc. The original owners had no objection to conferment of proprietary rights over the plaintiff, he being non-occupancy tenant. The Ard Salidarans are Managers. They act on behalf of the owners. The action of Ard Salidarans (Managers)/defendants, in inducting the plaintiff as non-occupancy tenant, cannot be challenged by the defendants. The original owners have not expressed any reservation in respect to induction of the plaintiff as non-occupancy tenant over the suit land or conferment of proprietary rights in favour of the plaintiff thereafter. In fact, while challenging mutation No.44 before the Collector, the defendants had made the original owners as parties to the case. However, there was no objection on behalf of the original owners to the attestation of mutation No.44 in favour of plaintiff. The original owners had not objected to attestation of mutation even on 18.01.1996 or at any time thereafter. Therefore, defendants even otherwise had no locus-standi to challenge the conferment of proprietary rights in favour of the plaintiff. The substantial question of law No.2 is answered accordingly.

4(iii). Substantial Question of Law No.3.

The civil suit was filed by the plaintiff on 28.05.1999, seeking permanent prohibitory injunction against the defendants on the strength of his being owner in possession over the suit land. Ownership over the suit land was conferred upon plaintiff by mutation No.44, attested on 18.01.1996. It is after the filing of suit by the plaintiff that the challenge to the mutation was laid by the defendants before the Collector. At the time of decision dated 24.09.2001 (Ext.P-6) of this appeal by the Collector, the defendants had already filed their counter claim before learned Civil Court, challenging mutation No.44 in question on same grounds, which were raised before the Revenue Court. Since the Civil Court was already seized of the matter, in respect of the claim by the plaintiff and counter-claim by the defendants in respect of validity of mutation No.44, therefore, there was no infirmity in the observations of the Revenue Court that legality of mutation No.44 was subjudice before learned Civil Court, findings of which will be binding on the Revenue Court. Jurisdiction of a Civil Court is superior to Revenue Courts and decision of Civil Court is binding on Revenue Court. It was also observed by learned Collector that at the time of attestation of mutation, notice was issued and served upon the defendants, who chose to remain absent. The substantial question of law No.3 is answered accordingly.

No other point has been urged.

5. Both the Courts below, after correctly appreciating the documentary as well as oral evidence led by the parties, had come to the just conclusion that the plaintiff was owner in possession over the suit land and accordingly, his suit was decreed

by both the Courts below. There is no infirmity in the concurrent conclusion drawn by learned courts below. Consequently, there is no merit in the instant appeal and the same is accordingly dismissed, so also pending miscellaneous application(s), if any.