

(1990) 12 SHI CK 0040

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 79 of 1980 with CMP No. 1032 of 1980

Babu Ram (deceased) and Others

APPELLANT

Vs

Shri Pohlo Ram (deceased) and Others

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Himachal Pradesh Land Revenue Act, 1954 — Section 46, 58
Specific Relief Act, 1963 — Section 34

Citation : AIR 1992 HP 8 : (1991) 2 ShimLC 211

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Dharam Chand, for the Appellant; K.D. Sood and Bandna Lakhanpal, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—This is defendant's appeal against the judgment and decree passed on March 17, 1980, by District Judge, Hamirpur and Una Districts at Una, dismissing his appeal and thereby confirming the judgment and decree passed on August 6, 1979, by Senior Sub-Judge, Una, by which suit of plaintiff-respondent was decreed for declaration with a consequential relief of injunction.

2. Plaintiff claimed a decree for declaration on the basis that he was in actual cultivating possession of 11 Kanals 7 Marias of land comprised in Khasra Nos. 669, 670, 671, 672 and 674 situate in village Nandpur, Tehsil Amb., district Una, as a tenant under the defendant and the correction made in the revenue records in Rabi 1976 showing the defendant to be in cultivating possession was factually wrong, illegal, unauthorised, ineffective and inoperative against his rights and as on the basis of this wrong entry in the revenue records, defendants had intention to interfere with his possession, therefore, as a consequential relief a decree for permanent prohibitory injunction restraining the defendant from causing any interference with his possession was also sought. Suit was resisted by the

defendant by taking a plea that plaintiff was never in possession of the suit land and the same was in his possession. The Revenue Officer had rightly passed the order for correction of entry in his name after deleting the wrong entry which had earlier appeared in revenue records showing the plaintiff to be in possession. It was further pleaded that the plaintiff had admitted, in writing, before the Panchayat that he was not in possession of the property. Jurisdiction of the Civil Court to entertain and decide the suit was also challenged by the defendant.

3. The trial Court held the plaintiff to be in possession of the suit property as a tenant on payment of rent under the defendant. It also held the order passed by the Revenue Officer ordering the correction to be ineffective and inoperative against the rights of the plaintiff and negated the plea of the defendant that the plaintiff ever gave up the possession of the suit property. Suit was held to be entertainable by a Civil Court. In view of these findings, suit of the plaintiff was decreed. The lower appellate Court confirmed the findings recorded by the trial Court and dismissed the appeal. The defendant has challenged the judgments and decrees of the Courts below in this regular second appeal.

4. During the pendency of appeal, an application under O. 41, R. 27 of the C.P.C. (C.M.P. No. 1032 of 1980) was filed by the defendant seeking permission to lead additional evidence. The application came up before the Court for consideration on October 14, 1980, when it was ordered that the same would be heard and decided at the time of final hearing of the appeal. It may be mentioned that during the pendency of the appeal before this Court both, the plaintiff as well as defendant, have expired and their respective legal representatives have been brought on record of the appeal.

5. I have heard the learned counsel for the parties. Learned counsel for the appellants urged before me that in view of the averments made in the plaint, in which the plaintiff had claimed a decree for declaration that he was a tenant on the suit land, Civil Court had no jurisdiction to entertain and decide the suit. It was further urged that there was cogent and convincing evidence adduced by the defendant on record to show that plaintiff was not in possession of the suit property and before the Panchayat the plaintiff had, on April 3, 1974, admitted by giving a document in writing that he was not in possession of the property and on the basis of this document, an order Ex. D-I was passed on April 25, 1976, by the Assistant Collector Second Grade, ordering the correction of entries in revenue records by showing the defendant to be in possession. It was on the basis of this order that change was affected in Khasra Girdawari in Rabl 1976 and for which report in Roznamcha Waquati was also made by the Patwari on May II, 1976 vide copy Ex. D-3. The learned counsel for the appellant further urged that the Courts below were not right in discarding the order passed by the Assistant Collector Second Grade on the ground that it was based upon the report of Girdawar Kanungo, who had not been produced in the witness-box. It was for this reason that application under O. 41, R. 27 of the Civil P.C. had been made seeking to produce by way of additional evidence the, report of Field Kanungo

dated Dec., 11, 1975 along with a copy of summon dated Nov., 18, 1976, by which Assistant Collector Second Grade had asked the plaintiff to appear before him to show cause as to why the correction in revenue records be not made in favour of the defendant.

6. Learned counsel for the respondents, on the other hand, urged that the status of the plaintiff was not admitted by defendant and, therefore, there was no bar for Civil Court to entertain and decide the suit and moreover incorrect entry had appeared in the revenue record against the plaintiff, therefore, suit for declaration in a Civil Court was competent and maintainable in view of Section 46 of the H.P. Land Revenue Act. It was further contended that defendant could not be permitted to lead additional evidence merely to fill in the lacuna in the case especially when such evidence was within the knowledge of the defendant and could have been easily produced in the trial Court.

7. I see much force in the arguments advanced by the learned counsel for the respondent-plaintiffs. The argument of the learned counsel for the appellants that the suit is barred u/s 58 of the Himachal Pradesh Tenancy and Land Reforms Act (hereinafter to be called as the Tenancy Act) is not tenable. There is no clause in Section 58 of the Tenancy Act which provides for a suit by or against a person claiming himself to be a tenant and whose status as a tenant is not admitted by the land owner. The legislature barred only those suits from the cognizance of Civil Court where there is no dispute between the parties about the relationship of landlord and tenant. It was a suit filed by the plaintiff claiming himself to be in possession of the property as a tenant under the defendant and defendant had not admitted the status of the plaintiff as such, rather, it was pleaded that the plaintiff was not at all in possession. The provisions contained in the Punjab Tenancy Act, as applicable to Himachal Pradesh, which are *pari materia* with the provisions of Section 58 of the Tenancy Act came up for consideration before the Supreme Court in *Shri Raja Durga Singh of Solan Vs. Tholu*, . The Sureme Court observed in its report as under (at page 363) :--

"..... There is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It would, therefore, be reasonable to infer that the legislature barred only those suits from the cognizance of a Civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of land was a tenant....."

In view of the specific pleadings and as observed by the Supreme Court in *Durga Singh's* case (*supra*), Civil Court undoubtedly had jurisdiction to entertain and decide the suit. Moreover, plaintiff had felt aggrieved by an entry made in the revenue records on the basis of an order passed by Revenue Officer. Section 46 of the Himachal Pradesh Land Revenue Act provides that if a person considers himself aggrieved as to any right of which he is in possession by an entry in a record of right or any periodical record, he can institute a suit for declaration of his rights under Chap. VI of the Specific Relief Act, 1963. The Courts below, as

such, were right in their view that Civil Court had jurisdiction to entertain and decide the suit.

8. The next argument of the learned counsel for the appellant that order dated April 25, 1976, was incorrectly discarded also has no force. Assistant Collector Second Grade, merely recorded in his order that on the basis of report of Girdawar possession of owner was established, therefore, an order was made for change of entry in revenue records. The Courts below were right by discarding this order on the ground that it was not based upon any evidence independently recorded by the Revenue Officer but was based upon a report of Girdawar Halqa, who had not been examined as a witness. The defendant was aware of the report of Girdawar Halqa but the same was not proved on record. Even the report of Girdawar Halqa would not have been relevant in the absence of his own statement. Any order effecting change in revenue record is always subject to decision by a Civil Court, as provided in Section 46 of the Himachal Pradesh Land Revenue Act. In this case parties led evidence independently. Ex. P-3 is the copy of jamabandi for the year 1968-69 in which the plaintiff is shown to be in cultivating possession of the property as a tenant. This entry was repeated in the next jamabandi, Ex. P-I, for the year 1973-74. Change in entries in revenue records appeared for the first time in Rabi 1976, on the basis of the aforementioned order Ex. D-I. Learned counsel for the appellants placed much reliance upon document dated April 3, 1974 and urged that plaintiff had, in fact, admitted before the Panchayat that he was not in possession of the suit property. This document cannot be considered at all for various reasons. Firstly, it purports to relinquish the rights as a tenant. Section 31 of the Tenancy Act puts a clear bar for such relinquishments by a tenant in favour of landowner and this provision has been inserted in the Tenancy Act with retrospective effect, that is, much prior to the date when the document came into existence and as such is ineffective. Secondly, the document was not put to the plaintiff when he appeared in the witness box, nor it was tendered in evidence. It was also not proved in accordance with law.

9. The oral evidence examined in this case on behalf of the defendant is to the effect that the plaintiff was earlier cultivating the land but the same was now in occupation of defendant. It was totally a new case which was sought to be made during the trial of the suit. The defendant had, in fact, originally taken up a stand that the plaintiff was not in possession of the property. Presumption of truth is attached to the entries made in the revenue records. When the plaintiff was shown to be recorded as a tenant on the property in the year 1968-69 and also in the year 1973-74, the Courts below rightly came to the conclusion, on the material available on record, that the plaintiff was in possession of the property as a tenant and were right in granting decree in his favour.

10. The application for adducing additional evidence cannot be allowed in the facts and circumstances of the case. It has been moved merely to fill in lacunae and is an after-thought. The defendant was aware of this evidence and no reason

has been assigned as to why the same could not be produced earlier. In my view, no useful purpose will be served even if the application is allowed and the evidence sought to be brought on record is permitted to be adduced. The application, as such is dismissed.

11. For the reasons stated above, the appeal has no force and the same is dismissed. No costs.