
(2008) 10 SHI CK 0016
In the High Court Of Himachal Pradesh

Bansi and Others

APPELLANT

Vs

Gurdas

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Punjab Tenancy Act, 1887 — Section 59

Citation : (2009) 1 ShimLC 33

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This Regular Second Appeal is directed against the judgment and decree dated 17.1.1997 passed by the learned Additional District Judge, Una in civil appeal No. 99/1994.

2. Brief facts necessary for the adjudication of this appeal are that the respondent-plaintiff (hereinafter referred to as "the plaintiff for convenience sake) filed a suit for permanent injunction in the Court of Sub Judge 1st Class, Amb on the allegation that the suit land was earlier in possession of one Santu son of Falla as tenant, who was father of the plaintiff. He used to pay rent to the owners. It is further alleged that after the death of Santu, the suit land came in possession of the plaintiff as tenant and thereafter she was in possession of the land as a tenant. The appellant-defendant (hereinafter referred to as "the defendant" for convenience sake) resisted the suit of the plaintiff and filed a written statement. The learned trial Court on the basis of the evidence led by the parties dismissed the suit of the plaintiff on 27.5.1994. The plaintiff preferred an appeal before the learned Additional District Judge, Una. The learned Additional District Judge Una allowed the appeal on 17.1.1997. The present appeal has been preferred against the judgment and decree dated 17.1.1997. The appeal was admitted on the following substantial questions of law:

1. Whether learned First Appellate Court below erred in appreciating the

provision of law applicable, pleadings of the parties and evidence adduced by them in its true and correct perspective, thereby vitiating the impugned judgment and decree?

2. Whether retrospective effect can be given by a statute when specifically it is not provided so in the said statute?

3. Whether provisions of Punjab Tenancy Act, 1887 which was prevalent at the relevant time would be applicable in the case in hand?

4. Whether learned First Appellate Court below erred in appreciating the oral evidence with special reference to the statement of DW-3 Shri Hans Raj?

5. Whether suit as framed is maintainable?

3. Mr. Ajay Sharma, Advocate has strenuously argued that the judgment and decree passed by the learned Additional District Judge dated 17.1.1997 is not sustainable in the eyes of law and he has supported the judgment and decree passed by the learned trial Court dated 27.5.1994. He also contended that the learned District Judge has failed to notice that Section 59 of the Punjab Tenancy Act, 1887 was applicable to the merged areas while reversing the judgment and decree passed by the learned Sub Judge 1st Class, Amb.

4. Mr. Sanjay Dutt Vasudeva, Advocate has supported the judgment and decree passed by the learned Additional District Judge, Una.

5. I have heard the learned Counsel for the parties and perused the record carefully.

6. Since all the questions of law are inter-connected, therefore, the same can be conveniently discussed together.

7. It is not disputed by the parties that Santu died on 23.3.1968. Short question which has fallen for consideration of this Court is: Whether the plaintiff would succeed to the tenancy rights of deceased Santu or not? The State of Himachal Pradesh comprises of two types of areas, namely, old areas and merged areas. The old area is that part of the Himachal Pradesh which prior to 1st November, 1966 was known as Union Territory of Himachal Pradesh and the merged areas are those areas which were transferred and merged with the old area on coming into force of the Punjab Re-organization Act, 1966 on or from 1st November, 1966, which earlier formed part of the State of Punjab. The suit land falls in "transferred territory". In the old areas the Himachal Pradesh Abolition of Big Landed Estate and Land Estate and Land Reforms Act, 1953 was applicable to the agricultural tenancies. It came into force with effect from 26th January, 1955. In the transferred territory, the principal Act pertaining to the tenancy was the Punjab Tenancy Act, 1887. It will be apt at this stage to reproduce Section 59 of the Punjab Tenancy Act, 1887 which reads thus:

59. (1) When a tenant having a right of occupancy in any land dies, the right shall devolve--

- (a) on his male lineal descendants, if any, in the male line of descent; and
- (b) failing which descendants, on his widow, if any until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom;
- (c) failing such descendants and widow, or his widowed mother, if any, until she dies or re-marries or abandons the land or is under the provisions of this Act ejected therefrom.
- (d) Failing such descendants and widow or widowed mother, or, if the deceased tenant left a widow or widowed mother, then when her interest terminates under Clause (b)(c) of this Sub-section (1), on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:

Provided, with respect to Clause (d) of this sub-section, that the common ancestor occupied the land.

[Explanation. For the purpose of Clause (d) and obtained in exchange by the deceased tenant or any of his predecessors-in-interest in pursuance of the provisions of Sub-section (1) of Section 58-A shall be deemed to have been occupied by the common ancestor if the land given for it in exchange was occupied by him].

(2) As among descendants and collateral relatives claiming under Sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as it were land left by the deceased in village in which the land subject to the right is situate.

(3) When the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage or by sub-lease for a term exceeding only year.

(4) If the deceased tenant has left no such persons as are mentioned in Sub-section (1) on whom his right of occupancy may devolve under that sub-section, the right shall be extinguished.

8. The Himachal Pradesh Tenancy and Land Reforms Act came into force on 21st February, 1974. Section 45 of the Act deals with succession to right of tenancy irrespective of the fact whether the tenant is an occupant or non-occupant and reads thus:

45. Succession to right of tenancy. When a tenant in any, in the male line descent; and

- (a) on his male linear descendants, if any, in the male life of descent; and
- (b) failing such descendant, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected there from; and
- (c) failing such descendants and widow, on his widowed mother, if any, until she

dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom; and

(d) failing such descendant and widow, or widowed mother or, if the deceased tenant left widow or widowed mother, then when her interest terminates under Clause (b) or (c) of this Section, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relative's.

9. Comparing Section 45 of the Act with Section 59 of the Punjab Tenancy Act, the major distinction, which can be noticed is the absence of a clause similar to Sub-section (4) of Section 59 of the Punjab Tenancy Act, 1887 providing for extinguishment of the rights of occupancy tenant on his death in the event of non-availability of any of the persons specified in Clauses (a) to (d) on which such a right could devolve 1994 (2) SLC 279). As noticed above, the suit land falls under the transferred area and in that area. The Punjab Tenancy Act, 1887 was applicable. Sh. Santu has died in the year 1968. The succession opened in the year 1968, but at that time in view of Sub-section 4 of Section 59, there was extinguishment of the rights of the occupancy tenant on his death in the event of non-availability on any of the persons as specified in Sub-clause (a) to (d) on whom such right could evolve. The plaintiff, Fato Devi (deceased), did not fall in any of the categories specified in Clause (a) to (d) of Sub-section (1) of Section 59. The learned trial Court has rightly noticed and taken into consideration Section 59 of the Punjab Tenancy Act, 1887 while dismissing the suit of the plaintiff. However, the learned Additional District Judge, Una has relied upon the judgment of this Court rendered in Smt. Charno Devi and Ors. v. Dali Mal (deceased) through his LRs. Shamsheer Singh and Ors. 1994 (2) SLC 279 while accepting the appeal. The judgment rendered in Smt. Charno Devi (supra) was primarily based upon the interpretation of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, more particularly, Section 45 (a) to (d). Section 59 of the Punjab Tenancy Act, 1887 and Section 45 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 are not *pari materia* in view of Sub-section (4) of Section 59. The learned Additional District Judge had omitted very vital fact that Santu had died on 23.3.1968. The tenancy could only devolve upon those persons, who have been mentioned in Section 59 of the Punjab Tenancy Act, 1887. The parties at the relevant time were governed by the Punjab Tenancy Act, 1887 and not under the Himachal Pradesh Tenancy and Land Reforms Act, 1972. Since there could not be devolvement of tenancy rights on the plaintiff, the subsequent entries in Ex.D-2 is of no relevance. The plaintiff though being daughter of Santu could not inherit the tenancy rights.

10. In view of the aforesaid reasoning, the Regular Section Appeal is allowed. The judgment and decree dated 17.1.1997 passed by the learned Additional District Judge, Una are set aside. The judgment and decree passed by the trial Court are restored. There will, however, be no order as to costs.