

(1997) 03 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 424 of 1991

Bishamber Dass

APPELLANT

Vs

Jeet Singh (since deceased) through his L.Rs. Smt. Urmala
Deri and Others

RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 114, 65

Citation : (1997) 2 ShimLC 521

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Anand Sharma and Trilok Chauhan, for the Appellant; Ramakant Sharma and Devyani Kuthiala, for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—This is the Plaintiff regular second appeal against the judgment and decree dated 16-8-1991 of the learned Additional District Judge (1), Kangra at Dharamshala, affirming the judgment and decree dated 31-3-1986 of the learned Sub Judge I st Class, Dehra whereby the suit of the Plaintiff for declaration and injunction was dismissed.

2. The subject-matter of dispute between the parties is the land measuring 9 kanals 12 marlas comprising of khasra Nos. 826, 862 and 863 of khata No. 124 min. khatauni No. 184 in Tika Dhanot, Mauza Ganghesu, Tahsil Dehra, District Kangra specifically described in the plaint and Jamabandi for the years 1971-72 and hereinafter referred to as the land in dispute.

3. The Plaintiff filed a suit for declaration that he is the owner and in possession of the land in dispute and that the revenue entries showing the land in dispute in possession of the Defendant and/or his father Ranu Ram are wrong. He also prayed for the grant of permanent injunction for restraining the Defendant from interfering with his possession over the land in dispute on the basis of such

wrong revenue entries.

4. The Defendant while resisting the suit asserted his possession over the land in dispute as a tenant and claimed to have acquired proprietary rights in respect thereof u/s 104, H.P. Tenancy and Land Reforms Act, 1972, hereinafter referred to as the Act. Alternatively, the Defendant claimed that he has acquired title to the land in dispute by virtue of his continuous, open and uninterrupted adverse possession.

5. The learned trial Court came to the conclusion that the Defendant since the time of his father has been coming in possession of the land in dispute as a tenant and has become the owner thereof under the provisions of the Act The suit of the Plaintiff was, therefore, dismissed vide judgment and decree dated 31-3-1986.

6. In appeal, filed by the Plaintiff, the learned first appellate Court, affirmed the judgment and decree of the learned trial Court.

7. By way of the present appeal the Plaintiff has assailed the findings of the two courts below. It is contended that the two courts below have misconstrued and misread the evidence. The admission made by Ranu Ram, father of the Defendant, regarding his possession before the settlement Officer has not been duly and properly considered.

8. The original Defendant Jeet Singh died during the pendency of the present appeal. The present Respondents 1 to 5 being his widow and sons were impleaded as party and they are hereinafter being referred to as the Defendant.

I have heard the learned Counsel for the parties and have also gone through the record of the case.

At the very outset, the admitted sequence of events may be stated for the purpose of proper determination of the questions involved in the present case.

9. Ex. P-5 is the copy of Jamabandi for the year 1971-72 wherein the land in dispute is recorded as in possession of Ranu Ram, father of the Defendant, as a non-occupancy tenant. On the basis of such entries, proprietary rights qua the land in dispute were conferred on Ranu Ram under the provisions of the Act by the Assistant Collector II Grade, Settlement Bharoli Circle vide order dated 2S-7-1978. Such order was assailed by the Plaintiff by way of an appeal before the Settlement Collector In the appeal before the Settlement Collector, Ranu Ram father of the Defendant on 6-5-1980 made a statement to the effect that he was the general attorney of the Plaintiff and was cultivating the land as such and that he was not the non-occupancy tenant qua the land in dispute. Copy of the statement so made is Ex. PW 4/A. On the basis of this statement, the appeal filed by the Plaintiff was allowed by the Settlement Collector on 6-5-1980 vide order, copy of which is Ex PW 4/A. The order dated 28-7-1978 of the Assistant Collector II Grade was set aside and it was directed that the land in dispute should be recorded as in self cultivatory possession of the Plaintiff as owner. After

the death of Ranu Ram, the Defendant on 24-4-1982, after a lapse of about two years approached the Settlement Collector for the review of the earlier order dated 6-5-1980. Vide order dated 6-1-1983 (copy Ex. D-4) the Settlement Collector allowed the review application and recommended the case to the Divisional Commissioner for permission to review and recall the earlier order dated 6-5-1980 and for remitting the case back to the Assistant Collector II Grade for enquiry afresh. On the receipt of necessary approval from the Divisional Commissioner, the order dated 6-5-1980 was recalled by the Settlement Collector on 7-11-1983 (Ex. D-5) and the case was remanded to the Land Reforms Officer (Tehsildar), Dehra for disposal afresh in accordance with law. In the meanwhile the suit, out of which the present appeal has arisen, came to be filed by the Plaintiff on 25-3-1982.

10. In coming to the conclusion that the Defendant has been coaling in possession of the land in dispute since the time of his father as a non-occupancy tenant, the two courts below have placed much reliance on the order dated 6-1-1983, Ex. D-4, whereby the earlier order dated 6-5-1980 was reviewed. In fact, no reliance could have been placed on the said order since the same was without jurisdiction.

11. A Division Bench of this Court in *Oriental Insurance Co. Ltd. v. Smt. Kala Devi and Ors.* 1997 (1) TAG 2, following the ratio laid down by the Apex Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, has held that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

12. I have perused the provisions contained in the Act. Chapter X thereof deals with the "acquisition of proprietary rights by tenants other than occupancy tenants". Section 104 of the said Chapter provides for the mode and manner of acquisition of proprietary rights by the tenants. Section 114 thereof provides for appeals and revisions. It reads:

114. Appeal and revision.-

(1) Any person aggrieved by an order made by the Land Reforms Officer may, within thirty days from the date of the order, prefer an appeal to the Collector, in such form and manner, as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Collector may, within sixty days from the date of the order, prefer an appeal to the Commissioner, in such form and manner, as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(3) With respect to all matters dealt with under this Chapter, the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the Land Reforms Officer, or the Collector or the Commissioner as provided in Section 65 of this Act.

A bare reading of the above provisions and other provisions in Chapter X of the Act shows that there is no specific provision enabling the Collector to review his own order. Even by implication it cannot be said that the Collector under the Act had the power to review his own order.

13. In the absence of the power to review, the order dated 6-1-1983 (Ex. D-4) passed by the Settlement Collector reviewing and recalling the earlier order dated 6-5-1980 (Ex P-7) is bad being without jurisdiction and cannot be relied upon in support of the case of Defendant.

14. As stated above, the order dated 6-5-1980 (Ex P-7) was passed in appeal by the Settlement Collector on the basis of the statement (Ex. PW 4A) by Ranu Ram, the father of the Defendant, wherein he has categorically admitted that he is not the non occupancy tenant of the land in dispute and that he is cultivating the same being the general attorney of the Plaintiff. The stand taken by the father of Defendant in his statement before the Settlement Collector was never disputed/questioned by him during his life time. It was only after his death that the Defendant started claiming tenancy qua the land in dispute.

15. The Defendant while appearing as DW 1 has not denied that his father was the general attorney of the Plaintiff. He has merely pleaded ignorance to the said fact. The validity of the power of attorney was not in issue before the Courts below since there are neither pleadings nor evidence in this regard. The learned first appellate Court therefore committed a grave error in returning a finding qua the power of attorney by observing that "the general power of attorney has been insideously prepared by the Appellant taking undue advantage of the poverty, illiteracy and backwardness of the father of the Respondent " Such observations are not supported from the material coming on the record and are liable to be set aside.

16. On the face of the admission coming from the mouth of Ranu Ram about his status qua the land in dispute, the oral evidence led by the Defendant cannot be accepted and relied upon.

17. A contention has been raised by the learned Counsel for the Defendant that the concurrent findings of the two courts below on a question of fact holding the Defendant to be in possession of the land in dispute as a non-occupancy tenant cannot be interfered with in this second appeal.

18. It is well settled that the concurrent findings of fact can be interfered if so warranted by compelling reasons. In the present case, the two courts below have failed to appreciate the evidence in its right perspective. There has in fact been a gross misreading of evidence. The learned first appellate Court has even

travelled beyond the scope of pleadings and the evidence coming on record. On the facts and in the circumstances of the case, it is a fit case where interference in the concurrent findings is called for.

19. Consequently, the present appeal is allowed. The judgments and decrees of the two courts below are set aside. The Plaintiff is declared to be the owner and in possession of the land in dispute. The Defendant is restrained from causing interference in the ownership and possession of the Plaintiff.

Parties are left to bear their own costs.