
(2014) 12 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : RSA No. 288/2004

Devinder Kumar

APPELLANT

Vs

Kabul Singh

RESPONDENT

Date of Decision : 31-12-2014

Acts Referred:

Citation : (2014) 12 SHI CK 0022

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sanjeev Kuthiala, Advocate for the Appellant; N.K. Thakur, Sr. Advocate and Ramesh Sharma, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment and decree dated 7.4.2004 rendered by the District Judge, Una in Civil Appeal No. 77 of 2001.

2. "Key facts" necessary for the adjudication of this appeal are that respondent-plaintiff filed a suit to the effect that the land measuring 0-45-32 hectares comprised in Khewat No. 239, Khatauni No. 452 and 453 and at present Khasra Nos. 415, 612, 451 and 451/1 situated in village Ambota, Tehsil Amb, District Una is owned and possessed by the plaintiff and change of the revenue entries in the name of defendants as owners and in the name of Ram Lok, predecessor-in-interest of defendants No. 3 to 17, of the land measuring 0-20-86 hectares comprised in Khewat No. 452 and Khasra Nos. 415, 451/1 and 612 as well as the order of the Land Reforms Officer, Amb dated 14.1.1976 Ex.D-2 were absolutely wrong, false, frivolous, baseless, illegal and without following proper procedure and jurisdiction and null and void with a decree for permanent injunction restraining the defendants from interfering in any manner whatsoever, raising any construction and cutting and removing any trees from the suit land. Kalu Ram son of Gokal was in possession of 11 kanals 15 marlas of land, which corresponding to the suit land as non-occupancy tenant under Ram Lok, who was predecessor-in-interest of defendants No. 3 to 17 on payment of rent. Kalu Ram became owner of the land when H.P. Tenancy and Land Reforms Act came into

force. During settlement operation new Khasra Nos. 451, 451/1 and 415 were carved out from old Khasra No. 4399 and new Khasra No. 612 was carved out from old Khasra No. 4428. Kalu Ram died in the year 1978. He was succeeded by his widow Janki Devi. She died in the year 1990. The plaintiff succeeded to the estate of Janki on the basis of registered "will" dated 22.1.1986. Thereafter, mutation was also sanctioned in favour of the plaintiff. Defendants during the course of consolidation in connivance with the revenue staff got changed the entries of the land measuring 0-20-86 hectares comprised in Khasra No. 415, 451/1 and 612 in their names as owners as well as in the name of Ram Lok. The plaintiff or his predecessor never relinquished their possession over the entire land nor were they ejected from the suit land. No proper procedure has been followed before making such entries nor was any opportunity given to Kalu Ram, predecessor-in-interest of the plaintiff.

3. The suit was contested by defendant No. 2, namely, Devinder Kumar son of Mansha Ram. It has been alleged in the written statement that Khasra No. 4428 and 4339 were carved out of old Khasra Nos. 6404 and 6485 min, respectively during consolidation operation which commenced in the year 1976-77. Kalu Ram was coming as tenant over the suit land. In fact, he was in possession of half of the share of the land measuring 24 kanals 15 marlas. The other land has been coming in possession of the co-sharers. According to Jamabandi for the year 1980-81, Kalu Ram was recorded as non-occupancy tenant under the owner Ram Lok whereas mutation No. 5883 regarding conferment of proprietary rights was wrongly and illegally sanctioned at the back of defendants in favour of Kalu Ram in respect of entire land. Ram Lok was a small land owner and had applied for resumption of land before the Land Revenue Officer on 3.12.1975. The Land Revenue Officer passed order for resumption of half of the share of the land on 14.11.1973. Thereafter, Kalu Ram left half share which was given to the land owner. The application was moved before the District Collector, Una, who called the report of Naib Tehsildar after conducting inquiry on the spot. Mutation No. 4909 was reviewed and land measuring 5 Kanals 11 Marlas out of Khasra No. 4428 and 4399 was shown to be owned and possessed by the defendants.

4. Replication was filed by the plaintiff. The trial court framed issues. The trial court decreed the suit on 14.9.2001. Defendant No. 2, namely, Devinder Kumar filed an appeal against the judgment and decree dated 14.9.2001 before the District Judge, Una. He dismissed the appeal on 7.4.2004. Hence, the present Regular Second Appeal. It was admitted on the following substantial question of law:

"Whether a co-owner who has inducted a tenant on his parcel of land is competent to give tenancy rights with respect to the land of the other co-owner and whether such tenant can have any right over the land on which such tenant has not been inducted and claim conferment of ownership on the basis of wrong entries incorporated without any order of a competent court or authority?"

5. Mr. Sanjeev Kuthiala, on the basis of substantial question of law framed, has

vehemently argued that proprietary rights were wrongly and illegally conferred in favour of Kalu Ram in respect of the entire land over which he was shown as tenant by ignoring the order of resumption Ex.D-2 dated 14.1.1976.

6. Mr. N.K. Thakur, learned Senior Counsel has supported the judgments and decrees passed by both the courts below.

7. I have heard the learned counsel for the parties and have gone through the records carefully.

8. Plaintiff has appeared as PW-2. According to him, the suit land was previously possessed by Kalu Ram, as tenant under the ownership of Ram Lok. The rent was paid. Kalu Ram became owner of the suit land by operation of law. His widow came into possession of the suit land as owner after the death of Kalu Ram. She executed a "will" in his favour. He became owner in possession of the suit land.

9. The contesting defendant Devinder Kumar has appeared as DW-1. According to him, he was in possession of 5 kanal land alongwith defendants as owner and the suit land was in his possession since 1975. The possession of the suit land was delivered to him by Kanungo. In his cross-examination, he has admitted that disputed land originally belonged to Ram Lok. He has also admitted that Kalu Ram was tenant on the share of deceased Ram Lok.

10. The "will" is Ex.PW-3/A. It was scribed by Kulwant Singh. Joginder Singh and Harnam Singh were marginal witnesses. Scribe Balwant Singh and witness Joginder Singh have died. PW-3 Basdev has identified the signatures of Joginder Singh on Ex.PW-3/A. He is brother of Joginder Singh. PW-3 Basdev has also proved the signatures of scribe Balwant Singh on the "will". The scribe was his father-in-law. He was conversant with his signatures. PW-5 Harnam Singh has deposed that he signed the "will" Ex.PW-3/A. The same was scribed by Balwant Singh, Petition Writer. The "will" was executed by Janki Devi. It was read over to her. She admitted the contents of "will" to be correct and thereafter put her thumb impression on the same in presence of witnesses. The plaintiff has duly proved the execution of "will" Ex.PW-3/A.

11. Both the courts below have rightly come to the conclusion that the order of resumption Ex.D-2 has been passed in a very perfunctory manner. Ram Lok was not present at the time of passing of order when the application was listed for hearing on 14.1.1976. There is nothing on record to suggest that a notice was given to tenant Kalu Ram or his family members when order of resumption Ex.D-2 was passed by the Land Reforms Officer. The order was required to be passed by the Land Reforms Officer in presence of the parties. Even after the order dated 14.1.1976 Ex.D-2, Kalu Ram was shown in possession of the suit land even in the Jamabandi for the year 1980-81. The proprietary rights were conferred upon the plaintiff and the mutation was also attested. Mutation No. 4909 dated 19.1.1992 was against law. The presence of plaintiff was not reflected in Ex.D-3. The civil court had the jurisdiction since the orders were in

violation of principles of natural justice. The legal heirs of Ram Lok, arrayed as parties, have neither chosen to contest the suit nor did they come forward to depose.

12. This Court in *Besru vs. Shibu*, 1999 (1) S.L.J 195 has held that the mutation under section 104 of the Act has to be attested in the presence of parties and the affected parties are required to be served personally or in any other mode of service permissible under the law.

13. What emerges from the facts enumerated hereinabove is that the proprietary rights were rightly conferred upon the plaintiff. Order Ex.D-2 dated 14.1.1976 was illegal.

14. In view of the analysis and discussion made hereinabove, there is no merit in the appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.