

(1997) 06 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 278 of 1988

DR. Kashmir Singh

APPELLANT

Vs

Smt. Jamna Devi and Others

RESPONDENT

Date of Decision : 09-06-1997

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 14, 37
Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 21(1)

Citation : (1998) 1 ShimLC 209

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

Bench : Single Bench

**Advocate : K.D. Sood, for the Appellant; Bhupender Gupta, for the Respondents
No. 1(1) to 1, for the Respondent**

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—This Regular Second Appeal has been directed by the Plaintiff against the judgment and decree dated 6-6-1988 of the learned District Judge, Una reversing the judgment and decree dated 28-8-1980 of the learned sub-Judge 1st Class (i), Una.

The subject-matter of dispute between the parties is the land comprising of Khasra Nos. 2815, 2816 and 2817 of village Amb, specifically described in the plaint and Jamabandi for the year 1966-67 and hereinafter referred to as the land in dispute.

2. Briefly stated the facts of the case as enumerated in the plaint are these. The Plaintiff is coming in cultivatory possession of-the land in dispute and some other land as a tenant under Defendants No. 2 to 11 on payment of annual rent of Rs. 60/-. Land measuring 10 Kanals 1 marla comprising of Khasra Nos. 2807, 2812, 2813 and 2814 out of the land in possession of the Plaintiff was given by him to Defendant No. 1 for cultivation. He also provided material to Defendant No. 1 for the consruction of a hut (Chhapar) in the said land. Three kanals three marlas of land representing 1/8th share of Defendant No. 3 in the land in possession of the

Plaintiff was purchased by him on 23-6-1970 for a consideration of Rs. 1000/-. Defendant No. 1 also purchased 5 Kanals 6 Marias of land representing 1/6th share in the land measuring 31 Kanals 16 marlas out of Khasra Nos. 2807, 2812, 2813 and 2814, 2815 and 2817 from Defendant No. 3 for a consideration of Rs. 1400/-.

3. Defendant No. 1 moved an application against Defendant No. 2 for correction of the revenue entries qua the land in dispute. Such application was also resisted by the Plaintiff. The Assistant Collector on 24-7-1973 ordered the correction of the revenue entries in favour of Defendant No. 1 qua the land in dispute except land comprising of Khasra No. 2816. This order of the Assistant Collector was assailed by both the Plaintiff and Defendant No. 1 before the Collector by way of two separate appeals. The Collector on 22-10-1974 dismissed the appeal of the Plaintiff and allowed the appeal of Defendant No. 1 thereby ordering correction of revenue entries qua khasra No. 2816 also in his favour.

4. The Plaintiff thereafter filed the suit out of which the present appeal has arisen for declaration that the orders of the Assistant Collector and the Collector are illegal, null and void and inoperative as against him. He also sought for permanent injunction for restraining Defendant No. 1 from interfering in any manner with his possession over the land in dispute.

Defendants 3 to 11 admitted the claim and suit of the Plaintiff.

Defendant No. 2 while admitting that the land in dispute is jointly owned by Defendants 2 to 11, asserted his exclusive hissadari possession over the same. He denied the possession of the Plaintiff.

Defendant No. 1 while resisting the suit claimed that he is in possession of the land in dispute as a tenant. The possession of the Plaintiff was denied. He also raised legal objections as to estoppel and maintainability of the suit.

Following issues were framed by the learned trial Court:

1. Whether the order dated 22.10.74 regarding the correction of Khasra Gir-dawari and jamabandi by the Collector in two appeals is illegal, void and ineffective as against the Plaintiff ? O.P.P.
2. Whether the Plaintiff is estopped from filing the present suit ? O.P.D.
3. Whether the suit is not maintainable ? O.P.D.
4. Relief.
5. The learned trial Court answered Issue No. 1 in the affirmative and issues No. 2 and 3 in the negative. Consequently the suit of the Plaintiff was decreed as prayed on 28-8-1980.

On an appeal having been preferred by Defendant No. 1, the learned District Judge reversed the findings of the learned trial Court, set-aside the judgment and decree and dismissed the suit of the Plaintiff. The learned District Judge

came to the conclusion that Defendant No. 1 is in possession of the land in dispute as a tenant and that the Assistant Collector and the Collector had rightly ordered the correction of the revenue entries in his favour.

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

The present appeal was admitted for hearing on the following substantial question of law:

Whether the order Ext. P-2 and P-3 are without jurisdiction and the admission Ext. DW-4/A stood successfully withdrawn and explained ?

Ext. P.2 is the copy of the order dated 24-7-1973 of the Assistant Collector II Grade, Amb while Ext. P.3 is the order dated 22-10-1974 passed in appeal by the Collector, Una.

Ext. DW-4/A is the copy of statement made by the Plaintiff before the Assistant Collector II Grade Amb, in the proceedings initiated by the Defendant No. 1 against Defendant No. 2 for the correction of revenue entries. In this statement the Plaintiff has categorically admitted that Defendant No. 1 is in possession of the land in dispute as a non-occupancy tenant on payment of annual rent of Rs. 45/-. He has gone to the extent of stating that once Defendant No. 1 had taken a loan from him for paying the rent of Rs. 451- to the owners. During the cross-examination, he has denied his own possession over the land in dispute.

The apex Court in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, has held that an admission is the best evidence that an opponent can rely upon and though not conclusive is decisive of the matter unless successfully withdrawn or proved erroneous.

In Avadh Kishore Das Vs. Ram Gopal and Others, it has further been held that admissions do raise an estoppel and shift the burden of proof on the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.

7. The learned Counsel for the Plaintiff has contended that the admission contained in Ext. DW-4/A stands explained and shown to be wrong in the subsequent statement (Ext. R-10) made by the Plaintiff on 19-7-1973 before the Assistant Collector, II Grade, Amb. This second statement was also made by the Plaintiff in the same proceedings in which the earlier statement Ext. DW-4/A was made. In the statement Ext. R-10 the Plaintiff had merely stated about his possession over the land in dispute. He has not stated anything with regard to his earlier statement Ext. DW-4/A in order to explain how the admissions made therein were wrong or to explain the circumstances under which such admissions were made. Merely because in a subsequent statement something contradictory has been stated, will not mean that the admissions made earlier stood explained and shown to be wrong.

8. There is yet Anr. aspect of the case. The Plaintiff on 25-10-1975, that is, during the pendency of the present suit before the trial Court, acting as attorney for one Biru son of Harjallu made an application to the Land Reforms Officer under Rule 21(1) of the H.P. Tenancy and Land Reforms Rules, 1975 for the resumption of the land in occupation of tenants. Copy of such application is Ext. X/ A perusal of column Nos. 7 and 10 thereof shows that land comprising of Khasra No. 2816 out of the land in dispute has been described by the Plaintiff himself as in possession of Defendant No. 1 as a tenant. In this very application, land other than the land in dispute has been shown by the Plaintiff to be in his possession as a tenant. This application, therefore, contains yet Anr. admission on the part of the Plaintiff which also has remained unexplained and has not been shown to be wrong.

9. There is no denying that u/s 37 of the H.P. Land Revenue Act, 1953, the Assistant Collector is competent to determine the dispute with regard to the revenue entries. The order passed by him is appealable u/s 14 of the said Act and such an appeal lies before the Collector. Therefore, the orders Ext. P-2 and P-3 cannot be said to have been passed by the authorities having no jurisdiction.

The substantial question of law framed in the present case is therefore, answered in the negative and against the Plaintiff.

Resultantly, the present appeal fails and the same is accordingly dismissed with costs quantified at Rs. 1500/-.