

(2010) 01 SHI CK 0047
In the High Court Of Himachal Pradesh

Jagdish Ram (Deceased) (through L.Rs.) and Promila Kanta	APPELLANT
Vs	
Karam Chand and Others	RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 57

Citation : (2010) 01 SHI CK 0047

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—Both these appeals are being disposed of by this judgment as they arise out of the same judgment of the learned District Judge and involve the same questions of law on which they were admitted for adjudication.

2. Karam Chand, Ramesh Chand, Bal Kishan, Tilak Raj, sons of Ram Chand (respondents/plaintiffs) instituted the suit out of which these appeal arise against Pramila Kanta, Tribhuwan Nath and Jagdish Ram (appellants/defendants) praying for decree of declaration that they are in possession as tenants of the land measuring 29 kanals 18 marlas comprised in Khewat No. 206, Khatauni No. 374, Khasra Nos. 32/10/2, 11/2, 12, 13 and 14 as per jamabandi for the year 1985-86 situated in village Nangal Kalan, Sub-Tehsil Haroli, District Una and the entry changed from Kharif 1987 in the name of defendant No. 1 as Khud Kasht in the revenue record is illegal, null and void and ineffective against their rights. Consequential relief in the nature of decree for permanent prohibitory injunction restraining the defendants-appellants herein from interfering in the suit land was also prayed for.

3. The suit was contested on a number of grounds by the appellants. One of them being that Ram Chand (deceased) predecessor in interest of the plaintiffs, had abandoned his possession and tenancy of the suit land in the year 1970 and since then the defendants are coming in possession of the suit land. Another

objection which is fundamental and goes to the root of the case is that the jurisdiction of the Civil Court was barred by Section 57 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter referred to as "the Act".) It was submitted that the Act itself is a complete Code for adjudication of any dispute arising therein. Emphasis was laid by the defendants on the fact that predecessor in interest of the plaintiff had relinquished his possession of land and he acknowledged such fact in writing Ext.DW4/A. The order of the Consolidation Authorities Ext.D2, only gave effect to this writing executed by late Shri Ram Chand.

4. The learned trial Court on the settled issues did not accept the validity and authenticity of Ext.DW4/A holding that it has not been proved in accordance with law as one of the witnesses Surender Nath DW2 who deposed that the document was written in his presence, has not appended his signatures anywhere on the document. He also admitted that the market value of the suit land for the year 1970 was Rs. 500/ - per Kanal and the document required compulsory registration under the law. More importantly, the Court holds that this document cannot be accepted as it gives effect to an improbable situation that is to say that the tenant voluntarily surrendered his possession of land which is not possible. There was no reason as to why writing Ext.DW4/A was executed by late Shri Ram Chand.

5. I have also perused this document Ext.DW4/A. The only reason given is that Ram Chand has surrendered the tenancy of land of his own volition. The words used are "Vo Araji main pichhle salon se kasht karta chala aaya hoon, vo araji maine ab va khushi khud chhod dee hai. Isse mera kao taaluk va vasta naa raha hai." translated it means that he has left possession of land being cultivated by him of his own free will and volition and he has no connection with it whatsoever. The learned Courts below have concluded that the name of Ram Chand continued as the cultivating tenant till 1977-78 as recorded in jamabandi Ext.P6. There is no explanation coming forth as to why this document Ext.DW4/ A which was purportedly executed in 1970 was not submitted to the revenue authorities earlier and why after a lapse of more than 15 years. The defendant did not move the revenue authorities earlier at any point of time for having his name deleted. This was vital for decision of the entire case.

6. I have not entered into the controversy with respect to Ext.DW4/ A, as one of the questions raised in both the appeals preferred by the landlords is whether the document Ext.DW4/A has been duly proved in accordance with law establishing the relinquishment of Tenancy by Ram Chand. This question was not admitted for decision of these appeals, meaning thereby that the findings of the Courts below that Ext.DW4/ A does not prove relinquishment, has been accepted by this Court. The two questions on which these appeals are admitted are:

2. Whether the jurisdiction of the Civil Court is barred under the provision of H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, if so its effect?

3. Whether the jurisdiction of the Civil Court is barred in view of the provisions of Section 115 of H.P. Tenancy and Land Reforms Act, 1972 and the law laid down by the Full Bench of this Hon'ble Court in Chunnia Devi v. Jindu Ram reported in 1991 (1) SLC 223?

7. Both these questions are inter-linked and taken up for decision together. It is not disputed that Section 57 of the Act reads:

57. Jurisdiction of civil Court barred as regards matters arising under this Act.-No person shall institute any suit or other proceedings in any civil Court with respect to any matter arising out of the consolidation proceedings or with respect to any other matter in regard to which a suit or application can be filed under the provisions of this Act.

8. It has been urged by the appellants that jurisdiction of the Civil Court taking cognizance of a civil suit is totally barred by this provision as the legislative intent is clearly expressed.

9. Ext.D2 is the order passed by the Assistant Collector 1st Grade purportedly giving effect to Ext.DW4/A. While considering this document, the learned Courts below held that this order has been passed in total disregard of the settled principles of law and in violation of the Rule of audi alteram partem. The learned trial Court while dealing with this document holds that it was passed by the Consolidation Officer on 5.6.1986 by which the suit land was ordered to be recorded in the cultivation of defendant No. 1 but this order was passed without giving any opportunity of being heard to the plaintiff or his successors in interest. The Court also holds that the reading of the order shows that an application for correction of revenue record was filed against a dead person by Pramila Kanta on 14.10.1985. The application was filed against Ram Chand who had already died on 3.2.1979 as such the application was filed against a dead person. The order itself does not show that the plaintiffs, who were successors in interest of Ram Chand were either given any notice of the proceedings or opportunity of being heard before passing the order. These findings are affirmed by the learned Appellate Court. In addition, the learned Appellate Court holds that order Ext.D2 was passed only on the basis of Ext.DW4/A which has not been accepted as being a document acknowledging surrender of tenancy. The Court records that there is no evidence on record to show that the Consolidation Officer either gave any opportunity to the plaintiff to represent his case much less any notice for correction. The Court affirms the findings that the application was filed against a dead person and order Ext.D2 cannot be sustained. For this, the Court relies on a judgment of this Court in Shri Ram Sain etc. v. Bhagirath etc. 1971 SLJ HP 151, holding that such an order is a nullity. The Court concludes and holds that the order has been passed in grave violation of the principles of natural justice and therefore, cannot be sustained and the consequences ensuing therefrom cannot be enforced in law. Learned Counsel appearing for the appellants as also the proforma appellants have laid stress on judgment of this Court in Ckumniya Devi v. Jindu Ram 1991 (1) Shim. L.C. 223. This was a case u/s 104 of the Himachal

Himachal Pradesh Tenancy and Land Reforms Act, 1972 wherein a similar provision (Section 104 of the Act) barring jurisdiction of the Civil Court came up for consideration before this Court. A Division Bench of this Court in *Shankar v. Rukmani and Ors.* 2003 (1) Shim.L.C. 300, held:

9. After analyzing the judgment in *Chuhniya Devi v. Jindu Ram's* case (supra), we have no doubt that the jurisdiction of the Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction.

(Emphasis supplied)

10. In somewhat similar circumstances, akin to the facts of the present case where no notice had been issued by the Assistant Collector, 2nd Grade before sanctioning of mutation, this Court in *Besru v. Shibu* 1999 (1) Shim. L.C. 343 held:

10. Admittedly, in the present case no attempt was made by the Assistant Collector 2nd Grade to serve the plaintiff in accordance with law. As such, the mutation is void ab initio being violative of the principles of natural justice....

11. Once the mutation Ext. P-2 conferring proprietary rights on the defendant is held to be void ab initio, it could be challenged in a Civil Court by the plaintiff as and when it adversely affected her rights....

11. A challenge was made in this case also with respect to the jurisdiction of the Civil Court being barred by the provisions of Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act which was rejected. The submission made on behalf of learned Counsel appearing for the appellant that the provisions of Section 57 of the Act (supra) oust the jurisdiction of the Civil Court cannot be accepted. Section 57 of the Act does not empower the officer discharging his functions as an Adjudicator to give a complete go by to the principles of natural justice and to act in a manner which is in grave and flagrant violation of the principles of natural justice. This provision does not exclude the rule of audi alteram partem which is the foundation of our legal system based on the Rule of Law. The fundamental requirements of giving notice and hearing are not dispensed with. The Adjudicator cannot arrogate unto himself unfettered powers destroying the very basis of a just and fair adjudicatory process. The Act does not contain any provision barring the applicability of the principles of audi alteram partem which are fundamental to the entire system of adjudication. I cannot persuade myself to hold as urged by learned Counsel appearing for the appellants that the jurisdiction of the Civil Court is barred. The foundation of the

order Ext.D2 is Ext.DW4/A which has been held by the Courts to be of no legal consequence which findings have been affirmed till this Court. However, irrespective of that fact Ext.D2 is an order which has been passed in grave and flagrant violation of the principles of natural justice. The application for correction of the revenue record was filed against a dead person and no opportunity was given to his heirs to contest the proceedings. Both these questions are answered against the appellants.

12. The appeals are accordingly dismissed. There shall be no order as to costs. All miscellaneous applications are disposed of. All interim orders are vacated.