

**(1997) 12 SHI CK 0014**

**In the High Court Of Himachal Pradesh**

**Case No : Regular Second Appeal No. 20 of 1991**

Jahlu Ram

APPELLANT

Vs

Major Lal Singh (Since Deceased) Through His Legal  
Representatives Rajender and Others

RESPONDENT

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**Date of Decision : 22-12-1997**

**Acts Referred:**

Himachal Pradesh Land Revenue Act, 1954 — Section 104(4)  
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(3),  
104(4), 104(6), 105  
Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 27, 29

**Citation : (1998) 1 ShimLC 343**

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

**Bench : Single Bench**

**Advocate : Ankush Sood, for the Appellant; B.K. Sood and K.D. Sood for the  
Respondents 1, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R.L. Khurana, J.—This is Defendant's second appeal against the judgment and decree dated 31-10-1990 of the learned Additional District Judge (II), Kangra at Dharamshala, modifying the judgment and decree dated 26-3-1990 of the learned Senior Sub-Judge, Kangra at Dharamshala.

2. The suit out of which the present appeal has arisen was filed by one Major Lal Singh, who is since dead and being represented by his legal heirs, namely, Respondents 1 (a) to 1 (f), hereinafter referred to as the Plaintiff.

3. The subject-matter of dispute between the parties is the land measuring 0-09-64 hectares comprising of Khata No. 37 min, Khatauni No. 95 and Khasra No. 1467 of tika Gabli Dhar, Mauza Khanyara, Tehsil and District Kangra, specifically described in the plaint and jamabandi for the year 1978-79 and hereinafter referred to as the land in dispute.

4. The Plaintiff filed a suit for declaration to the effect that he along with

Defendants 2 to 6 (proforma Respondents 2 to 6 in the present appeal) is the owner and in possession of the land in dispute. He also sought permanent injunction as a consequential relief for restraining the Defendant from interfering with the ownership and possession of the Plaintiff and Defendants 2 to 6 qua the land in dispute. In the alternative the Plaintiff prayed for the possession of the land in dispute.

5. It was averred that the Defendant during the course of settlement operation in connivance with the Revenue staff got himself wrongly recorded as in possession of the land in dispute and on the basis of such wrong entries had strated interfering with the possession of the Plaintiff and Defendants 2 to 6 over the land in dispute.

6. It was further averred that on the basis of wrong Revenue entries, the Revenue authorities, without making any inquiry, have granted proprietary rights in favour of the Defendant qua the land in dispute vide mutation No. 151 dated 10-9- 1984. Such order of the Revenue authorities is bad, illegal and without jurisdiction and as such not binding on the rights of the Plaintiff and Defendants 2 to 6.

7. The Defendant while resisting the suit asserted his possession over the land in dispute. It was pleaded that he was the tenant and has now become the owner of the land in dispute. Objections as to jurisdiction of Civil Court, estoppel, maintainability of the suit, locus standi of the Plaintiff and absence of cause of action were also raised.

8. On the pleadings of the parties as many as eight issues were framed by the learned trial Court. The suit of the Plaintiff for declaration was decreed and he along with Defendants 2 to 6 was declared to be the owner of the land in dispute. The Defendant was held to be in forcible possession of the land in dispute. Consequently, the relief of permanent injunction was declined. The learned trial Court also declined the alternative relief for possession on the ground that Defendant came into forcible possession of the land in dispute prior to the suit and that the Plaintiff was at liberty to bring a fresh suit for possession if he so chooses.

9. Both the parties felt aggrieved by the judgment and decree dated 26-3- 1990 of the learned Trial Court. The Plaintiff by way of an appeal being Civil Appeal No. 26 of 1990 assailed the findings of the learned trial Court whereby alternative relief of possession was declined. The Defendant on the other hand by way of cross-objections/appeal registered as Civil Appeal No. 28 of 1990 assailed the findings of the learned trial Court holding him to be in forcible possession of the land in dispute and also the findings holding the Plaintiff and Defendants 2 to 6 to be the owners of the land in dispute. Attack was also made on the findings of the learned trial Court holding that civil Court had the jurisdiction to go into the dispute between the parties.

10. The learned Additional District Judge vide the impugned judgment and

decree allowed the appeal of the Plaintiff, dismissed the cross-objections/appeal of the Defendant and after modifying the judgment and decree of the learned Trial Court granted a decree for possession of the land in dispute in favour of the Plaintiff and Defendants 2 to 6.

11. The Defendant is now before this Court by way of the present regular second appeal.

At the very out-set it has been contended on behalf of the Defendant that since the question involved was connected with the conferment of proprietary rights u/s 104 of the H.P. Tenancy and Land Reforms Act, 1972, (for short the Act), Civil Court had no jurisdiction. In support the learned Counsel for the Defendant has placed reliance on the ratio laid down by a Full Bench of this Court in Chuhniya Devi v. Jindu Ram 1991 (1) SLC 223), wherein it has been held:

... the Civil Court has no jurisdiction to go into any question connected with the conferment of proprietary rights u/s 104, H.P. Tenancy and Land Reforms Act, 1972, 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.

There is no denying that in the present case proprietary rights stand conferred on the Defendant u/s 104 of the Act.

The Plaintiff in para 7 of the plaint has specifically pleaded in the following terms:

That the Revenue officers concerned without making any inquiries have sanctioned the mutation No. 151 regarding conferment of ownership rights on 10-9-1984, shows that the Revenue officers have acted illegally and unauthorisedly in the matter and as such the Plaintiff not bound by order regarding the sanctioning of mutation No. 151 and is also not bound by the wrong entries in the Revenue records regarding possession of Jahlu Defendant No. 1 as tenant.

Again in para 8 of the plaint the Plaintiff has averred:

That the provisions of Section 104 of H.P. Tenancy and Land Reforms Act, 1972 are inapplicable. The Revenue officer concerned has acted in an illegal and unauthorised manner and the order of the Revenue officer dated 10-9-1984 on mutation 151 is without jurisdiction and null and void and the same is not binding upon the Plaintiff because Jahlu Defendant No. 1 never held the status as tenant.

12. Section 104 falls under Chapter X of the Act which deals with "acquisition of proprietary rights by tenants other than occupancy tenants". The provisions contained in Chapter-X aim at ensuring that proprietary rights in the land are with actual tiller thereof. A limited right has been conferred on the landowner to resume the land under a non-occupancy tenant to the extent and in the manner specified u/s 104. Where a tenancy land is permitted to be resumed by the

landowner for personal cultivation, all rights, title and interest of the tenant in such land stands extinguished and it shall be free from all encumbrances, if any, created by the tenant thereon. Similarly, the right, title and interest in the rest of the tenancy land of the landowner would come to vest in the tenant free from all encumbrances. The landowner, however, is entitled to an amount by way of compensation for his land in respect of which the proprietary rights has vested in the tenant. Sections 105 and 106 of the Act deal with the assessment and payment of amount by way of compensation to the landowner by a tenant. Such amount of compensation is to be assessed and determined by the land Reforms Officer after publication of a notice in the prescribed manner on a claim being filed.

13. The scheme of Chapter-X of the Act makes it clear that there are bound to be the cases where the landowner may come forward with the plea that the person recorded as in cultivating possession of the land, is not a tenant. In such cases, the person who is recorded as in cultivating possession of the land, is likely to contest the claim of the landowner by asserting that he is in occupation of the land as a tenant. If such a dispute arises, the same has to be determined by the Land Reforms Officer under Sub-section (4) of Section 104 of the Act. The relevant provisions read:

Whenever a dispute arises whether a person cultivating the land of a land-owner, is a tenant or not, the burden of proving that such a person is not a tenant of the landowner shall be on the latter.

Rule 27 of the H.P. Tenancy and Land Reforms Rules, 1975, hereinafter referred to as the Rules, prescribes the procedure for conferment of proprietary rights on tenants covered by Sub-section (3) of Section 104 of the Act. Rule 29, provides for the determination of disputes under Sub-section (4) of Section 104 of the Act. It reads:

If there is a dispute regarding the entries of the land records the Land Reforms Officer, in his capacity as an Assistant Collector of the First Grade, shall decide the dispute under Sub-section (4) of Section 104 in accordance with the relevant provisions of the Punjab Land Revenue Act, 1887, or the Himachal Pradesh Land Revenue Act, 1954, as the case may be. The disputes of such cases will be determined on a summary inquiry on the files. (17 of 1887 and 6 of 1954).

Where a tenancy is in a part of a field number, tatima shajras of that part will be prepared.

14. Sub-section (6) of Section 104 of the Act further provides that save as otherwise provided in Section 114, every decision of the Land Reforms Officer, u/s 104 shall be binding on all persons claiming an interest in a holding notwithstanding the fact that any such person has not appeared or participated in the proceedings before the Land Reforms Officer or any other Revenue authority.

15. Section 114 of the Act provides for appeal and revision in the following terms:

(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.

16. Sections 112 and 115 of the Act exclude the jurisdiction of the Civil Courts and any other authority. Section 112 reads:

Save as otherwise expressly provided in this Chapter, the validity of any proceedings or orders taken or made under this Chapter shall not be called in question in any Civil Court or before any other authority.

Section 115 of the Act provides:

Save as otherwise expressly provided in this Chapter, every order made by the Collector, Commissioner or Financial Commissioner shall be final, and no proceeding or order taken or made under this Chapter, shall be called in question by any Court or before any officer or authority.

Thus, under the scheme of Chapter-X of the Act read with the relevant rules, an inquiry has to be conducted by the competent authority before conferring proprietary rights on a tenant in respect of the land under his tenancy and after holding such an inquiry, an order has to be passed by the competent authority either conferring or declining to confer proprietary rights.

17. It is significant to note that an order passed by the competent authority u/s 104 of the Act is appealable u/s 114 of the Act and such appeal lies before the Collector.

18. It is well settled that when an order is appealable, it must be a reasoned order so that the appellate authority can appreciate the reasoning. A non-speaking order, being violative of principles of natural justice, is void ab-initio.

19. Ex. A-1 is the copy of mutation dated 10-9-1984 whereby proprietary rights are alleged to have been conferred on the Defendant. A bare perusal of the same shows that the same was never preceded by any order of the competent authority, namely, the land Reforms Officer, u/s 104 of the Act. Nor there is any other evidence to show that the procedure prescribed under Chapter X of the Act and the relevant Rules was followed by the competent authority. Besides, no speaking order appears to have ever been passed by the competent Authority so that the Plaintiff would have been able to assail the same by way of an appeal u/s 114 of the Act.

20. Therefore, in the present case, it is writ large that the statutory authority envisaged by the Act had not acted in conformity with the fundamental principles of judicial procedure and that there has been non-compliance of the provisions of the Act and the relevant Rules. The Civil Court as such in view of the ratio laid down in Chuhniya Devi's case (supra) has the jurisdiction to go into the question involved in the present case since the mutation regarding conferment of proprietary rights is illegal, null and void for the reasons stated above.

21. Next comes the question whether the Revenue entries in favour of the Defendant showing him to be in possession of the land in dispute as a tenant are correct.

22. Admittedly, the name of the Defendant has come to be recorded as in possession of the land in dispute as a tenant only during the course of settlement operations as is evident from Ex. P-2, the copy of misal haqiyat prepared in 1975- 76 after the settlement. The earlier revenue entries for the year 1968-69 (Ex. P-1) record the Plaintiff and predecessor-in-interest of Defendants 2 to 6 as in possession of the land in dispute as owners.

23. During the course of evidence, nothing has come on the record as to how and on what basis the Revenue entries came to be changed in favour of the Defendant during the settlement operations.

24. The learned Counsel for the Defendant has contended that under the law there is a presumption of truth attached to the record of rights and in view of such presumption attached to Ex. P2, the Defendant will be deemed to be in possession of the land in dispute as tenant.

25. No doubt there is a presumption of truth, under the law, attached to the record of rights, however such presumption is rebuttable one. The presumption as attached to Ex. P-2 stands rebutted in the absence of evidence to show how the change in favour of the Defendant was effected.

26. In Khushi Ram v. Hans Raj and Ors. 1980 PLJ 337, the High Court of Punjab and Haryana while dealing with the question of presumption of truth attached to the record of rights, has held that where the earlier Revenue entries are changed in later Revenue entries and such change is effected without any mutation or order of any Revenue Officer or authority showing how the change was made,

the presumption attached to the later Revenue entries would stand rebutted and reliance will have to be placed on earlier Revenue entries.

27. To the similar effect it has been held by this Court in Choudhary Sada Ram and Ors. v. Choudhary Amar Nath ILR 1984 HP 509 and by the Apex Court in Durga and Ors. v. Nilkhi Ram and Ors. 1969 PLJ 105.

Even otherwise, as per the Defendant's own case the Revenue entries in his favour showing him to be in possession of the land in dispute as a tenant, are wrong.

28. Admittedly, the land in dispute is owned by the Plaintiff to the extent of 7/10 share and the Defendants 2 to 6 to the extent of 3/10 share. According to the Defendant, he was inducted as a tenant qua the land in dispute by the Plaintiff in the year 1969 and that he has been paying rent to the Plaintiff. Assuming for the sake of arguments that Defendant was inducted as a tenant by the Plaintiff, he could have been so inducted only to the extent of the share of the Plaintiff. It is not the case of the Defendant that the Plaintiff had the authority or consent of Defendants 2 to 6 or their predecessor to induct him as a tenant even qua their share. The Defendant also has not averred and claimed that any rent was being paid by him either to Defendants 2 to 6 or to their predecessor-in-interest. If the Defendant was inducted as a tenant only qua the share of the Plaintiff, the Revenue entries showing him to be in possession of the whole of the land in dispute, on the face of it, are wrong and as such Cannot be relied upon.

29. There is yet Anr. significant aspect of the case. The Defendant while appearing as DW 1 has categorically admitted that he had never applied to the Revenue authorities for effecting the Revenue entries in his favour though the land was given to him in the year 1969. He did not also ask for making of Revenue entries in his favour even during the settlement operations. If no application was made by him in this regard, it is not known how his name came to be entered as a tenant qua the land in dispute.

30. On the basis of evidence coming on record, the two Courts below have lightly held the Defendant to be in unauthorised and illegal possession of the land in dispute and in holding the revenue entries in favour of the Defendant showing him to be in possession as a tenant, as wrong.

31. Since the Defendant is in unauthorised possession of the land in dispute, the learned first Appellate Court has rightly granted a decree for possession in favour of the Plaintiff and Defendants 2 to 6 in view of the alternative relief of possession claimed by the Plaintiff.

Resultantly, the present appeal fails and the same is dismissed with no orders as to costs.