

(2010) 04 SHI CK 0023
In the High Court Of Himachal Pradesh

Jaswant Singh (dead) through L.Rs.

APPELLANT

Vs

Gian Chand and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 04 SHI CK 0023

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Appellant, who was plaintiff before the trial Court, has preferred this appeal against the judgment and decree dated 6th November, 1996 of learned District Judge, whereby reversing the judgment and decree, dated 25th August, 1992 of learned trial Court, i.e. Sub Judge 1st Class, Amb, suit of the plaintiff-appellant has been dismissed.

2. Facts relevant for the disposal of the appeal may be noticed. Plaintiff-appellant Jaswant, now dead and represented by his LRs, filed a suit for declaration that he was owner in possession of 3 Kanals 2 Marlas land bearing Khasra No. 1817 and that the entries in the revenue papers, showing deceased Kalu, the predecessor of the defendantsrespondents, as tenant of the said land under the plaintiff, were wrong, illegal and of no consequence, and the mutation, conferring the proprietary rights on said Kalu, which was attested, on the basis of said revenue entries, was illegal, void and of no effect on the rights of the plaintiff. It was pleaded that Kalu, the predecessor of the defendantsrespondents had died in the year 1967 and that after his death his name was recorded as a tenant under the plaintiff, in the revenue papers, in the year 1972 and on the basis of that entry mutation of conferment of proprietary rights was attested. It was stated that since Kalu was dead, at the time when he was entered as tenant under the plaintiff, the question of entry being correct could not have been there and consequently the authorities, under the H.P. Tenancy and Land Reforms Act, did not have jurisdiction to attest the mutation of conferment of proprietary rights.

3. Suit was contested by the defendantsrespondents, who pleaded that earlier Kalu was a tenant, under the plaintiff-appellant, on land bearing Khasra No. 2616/1664, as per entry in Jamabandi for 1968-69, copy Ex. D-1, and that thereafter consolidation took place and in that consolidation plaintiff was allotted the suit land in lieu of land bearing Khasra No. 2616/1664 and so Kalu was recorded as tenant under the plaintiff, in respect of the suit land.

4. Trial Court rejected defendants' plea and concluded that Kalu was never a tenant under the plaintiff of the suit land and as such entries in the revenue papers, showing him as such, were wrong and illegal. It was also held that the order of the Land Reforms Officer, conferring the proprietary rights upon Kalu, the predecessor of the defendants-respondents, was also illegal, especially when Kalu was no more, when the entry was made in his favour and the mutation of conferment of proprietary rights was attested (date of the order of conferment of proprietary rights is 27th May, 1983). Consequently, suit was decreed.

5. Defendants-respondents filed appeal in the Court of District Judge. Learned District Judge has accepted the appeal, holding that Kalu was a tenant under the plaintiff, in respect of the land described in Jamabandi Ex. D-1, prior to consolidation and that when on consolidation the plaintiff was allotted the suit land, in place of land described in Ex. D-1, Kalu became tenant, under the plaintiff, in respect of the suit land. Learned District Judge also held that Civil Court's jurisdiction was barred, in view of the law laid down by a Full Bench of this Court in Chuhniya Devi v. Jindu Ram 1991(2) SLJ 1082.

6. Plaintiff then filed appeal in this Court, which was admitted on the following substantial questions of law:

1. Whether in view of the fact that tenancy had been disputed and Kalu Ram had died on 9.3.67 and the mutation having been attested on 27.5.83 in favour of dead person, the jurisdiction of the civil court was barred?

2. Whether on the proper construction of the pleadings of the parties and the provisions of the H.P. Tenancy and Land Reforms Act it could be assumed that the jurisdiction of civil court to adjudicate upon the dispute between the parties was barred?

3. Whether on the material on record, it could be assumed that a valid entry of tenancy has been incorporated in the revenue record and the attestation of mutation in favour of dead person could be legal and valid especially when there was no evidence of induction of tenancy or connection thereof with the suit land?

4. Whether oral and documentary evidence, especially Ex. P-1, Jamabandi for 1959-60, P-2, Jamabandi for 1968-69, P-3 Misal Hakiayat 1972-73, Ex. P-4, Death certificate and the statement of PW Jaswant Singh, PW-2 Budhia has been misread and misconstrued by the court below?

5. Whether the learned District Judge has properly applied the principle laid down in the decision of 1990(1) SLC 223, Chunia Devi v. Jindu Ram and 1978-

6. Whether in consolidation proceedings, an exchange of land without the consent of coowners could take place and part of the land burdened under the liability of tenancy?

7. Whether the mutation and its attestation conferring proprietary rights could validly be sanctioned with retrospective effect, taking a backward presumption regarding the creation of tenancy?

7. I have heard the learned Counsel for the parties and gone through the record.

8. From a reading of Jamabandi for the year 1959- 60, pertaining to the suit land, copy Ex. P-1 and Jamabandi for the year 1968-69, pertaining to land bearing Khasra No. 2616/1664, Ex. D-1, it appears that plaintiff Jaswant Singh and two other persons, namely Shyama and Ajudhya, purchased the land described in the aforesaid two Jamabandis from one Ran Singh. Plaintiff was recorded as co-sharer in possession of the land described in Ex. D-1, i.e. Khasra No2616/1664, measuring 3 Kanals 2 Marlas and under him Kalu was recorded as non-occupancy tenant, on payment of rent, in kind, to the extent of half of the produce of the land. Suit land described in Jamabandi for the year 1959-60, Ex. P-1, was recorded in exclusive possession of Ajudhya, another co-vendee with the plaintiff and under him one Rama was recorded as non-occupancy tenant.

9. It is not in dispute that consolidation had taken place during the years 1969 to 1973. In that consolidation, land described in Jamabandi for the year 1968-69, copy Ex. D-1, i.e. Khasra No. 2616/1664, which was in exclusive possession of the plaintiff, through non-occupancy tenant Kalu, appears to have been allotted to some other person and in lieu thereof plaintiff was allotted the land described in Ex. P-1. Since the plaintiff had been allotted the land described in Ex. P-1, Kalu could not have continued to occupy the land recorded in Ex. D-1, after such allotment. So, he was entered as tenant on the land allotted to the plaintiff, in consolidation, which is described in Ex. D-1, on account of his pre-existing right as non-occupancy tenant under the plaintiff.

10. Result of the above discussion is that no fault can be found with the finding of the learned District Judge that Kalu was a tenant under the plaintiff on a piece of land, which before consolidation was different from the suit land and that when the plaintiff got the suit land in lieu of that piece of land, Kalu became plaintiff's tenant on the land that was allotted to him in consolidation, i.e. the suit land.

11. Coming to the plea that District Judge has erred in holding that the Civil Court did not have the jurisdiction, in view of the law laid down by a Full Bench of this Court in Chuhniya Devi's case (supra), learned Counsel for the plaintiff-appellant submits that in view of the above finding of fact, the question does not survive.

12. As a result of the abovestated position, all the substantial questions of law,

on which the appeal was admitted, are answered against the appellant and consequently the appeal is dismissed.

Appeal stands disposed of.