
(2023) 08 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 389 Of 2006

Kalam Patti (Deceased) Through Lrs

APPELLANT

Vs

Collector Distt. Shimla, H.P. & Ors

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Citation : (2023) 08 SHI CK 0057

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Deepak Bhasin, Sambhav Bhasin, Navlesh Verma, R.P. Singh, Avni Kochhar, Prashant Sen

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment & decree passed by the learned Additional District Judge, Shimla, Camp at Rohru, vide which the appeal filed by the respondents-defendants before the learned first appellate Court was allowed and the judgment & decree passed by the learned Civil Judge (Jr. Division), Court No.1, Rohru, was set-aside. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that plaintiff filed a civil suit before the learned trial Court for possession of the land comprised in Khata/Khatauni No.327 min/603, Khasra No. 1282, measuring 0-13-73 hectares situated in Chak Sunda-Bhonda, Tehsil Chirgaon, District Shimla, H.P. (hereinafter referred to as the 'suit land'). It was asserted that the plaintiff is the owner of the suit land. The suit land is recorded as Gair Mumkin Ahata (courtyard) in the revenue record. The plaintiff is shown to be the exclusive owner in the column of ownership but Block Development is shown in the column of possession in the revenue record. The plaintiff was married in the village

Dungyani about 30 years ago. Her father Sadhu died leaving behind the plaintiff as his sole legal heir. The plaintiff is the owner of the suit land. She is residing in the village Dungyani and did not have any knowledge about the spot position. The department started raising construction adjacent to the suit land. When the plaintiff resisted the construction, she was told that her land was vacant. The plaintiff inspected the revenue record and found that the name of Block Development Officer, Chirgaon was recorded in the column of possession. The plaintiff applied for demarcation and the report of demarcation showed that the land is in possession of defendants No. 2 & 3. The plaintiff requested the defendants to hand over the vacant possession to the plaintiff, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by the defendants by filing a written statement taking preliminary objections regarding lack of locus-standi, jurisdiction, cause of action & maintainability, the suit not being properly valued for the purpose of Court fee and jurisdiction, the plaintiff being estopped to file the present suit by her act and conduct and the suit being barred by limitation. The contents of the plaint were denied on merits. It was asserted that the defendants are owners in possession. The defendants have already constructed buildings on the suit land. They are running Block Development Office for more than 25 years. Khasra No. 608 was recorded in the ownership of temple Narsingh Mohatmeen Birja Nand and the father of the plaintiff Sadhu was recorded as occupancy tenant in the copy of Jamabandi for the year 1962-63. The name of Sarkar Devta Mindhar was recorded in the column of ownership and the father of plaintiff Sadhu was recorded to be occupancy tenant in the subsequent jamabandi. Sadhu gave the suit land to Block Development Chirgaon and Block Development Chirgaon became a non-occupancy tenant. The department raised the building and kept a courtyard adjacent to the building. Sadhu never resisted the construction of the department. The ownership was conferred upon Sadhu, but this conferment is bad. The Court has no jurisdiction to hear and entertain the suit because the dispute is between the landlord and tenant. The defendants are in possession for more than 25 years and the suit is barred by limitation. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The following issues were framed by the learned trial Court on 04.09.2003:

1. Whether the plaintiff is entitled for the possession of suit land, as alleged? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether this Court has no jurisdiction to entertain the present suit? OPD
4. Whether the suit is not properly valued for the purpose of Court fee & jurisdiction? OPD
5. Whether the plaintiff is stopped to file the present suit by its act, conduct &

deed? OPD

6. Whether the suit is not maintainable? OPD

7. Relief.

6. The parties were called upon to produce the evidence and the plaintiff examined herself (PW-1), Lahori Singh (PW-2), and Kali Ram (PW-3). The defendants examined Yogesh Chauhan (DW-1), Devinder Mehta (DW-2), Nihal Chand (DW-3) and Surinder Singh (DW-4).

7. The learned trial Court held that the plaintiff is recorded to be the owner of the suit land. The defendants did not plead the hostile possession in denial of the title of the plaintiff. The plaintiff filed a suit for possession and such a suit is not barred by limitation in the absence of any claim of adverse possession. The plaintiff has a locus-standi to file the present suit. Hence, Issue No. 1 was answered in affirmative, Issue Nos. 2 to 6 were answered in negative and the suit of the plaintiff was decreed.

8. Being aggrieved from the judgment and decree passed by the learned trial Court, an appeal was filed before the learned Additional District Judge, Rohru, H.P. Learned Additional District Judge held that the suit land was recorded in possession of Sadhu, father of the plaintiff as Maurusi (occupancy tenant). Subsequently, it was recorded in possession of Block Development Office Chirgaon as a non-occupancy tenant. Ownership rights were conferred upon Sadhu. Khasra No.608 was changed to Khasra No.1282. It is recorded in possession of the Block Development Department as Gair Mumkin Ahata. The entries in favour of the defendants continued from 1966-67. The Abadi was constructed before 1976-77. Sadhu was residing in the village and he never interfered with the construction of the defendants, which showed the consent of Sadhu. Sadhu was not paying any rent and he was not in possession as a tenant. He could not acquire any title after the commencement of the H.P. Tenancy and Land Reforms Act. The plea of the plaintiff that the defendants had taken the forcible possession of the suit land was not established. Hence, the judgment and decree passed by the learned trial Court were set-aside and the suit of the plaintiff was dismissed.

9. Being aggrieved from the judgment and decree passed by the learned Additional District Judge, Rohru, the present appeal has been filed asserting that the learned First Appellate Court erred in dismissing the suit. The revenue record established the ownership of the plaintiff. The land is shown as Gair Mumkin Ahata (courtyard), which is duly corroborated by the statement of Surinder Singh Patwari (DW-4). Learned Appellate Court wrongly concluded that Sadhu was out of possession and could not have acquired any title after the commencement of the H.P. Tenancy and Land Reforms Act. Hence, it was prayed that the present appeal be allowed and the judgment and decree passed by learned First Appellate Court be set aside.

10. The appeal was admitted on the following substantial question of law on 14.05.2007:

"Whether the entries were wrongly ignored by the learned First Appellate Court and there has been misreading of evidence in relying upon the oral evidence led by the parties?"

11. An application was filed by the State of H.P. to establish that the land stood acquired and an award was passed on 17.12.1965. This Court framed an additional issue and remanded the matter to First Appellate Court to record evidence of the respective parties on the following issue:

"5A. Whether the suit land stood lawfully acquired and compensation was paid, as alleged? ...OPD"

12. Learned First Appellate Court recorded the evidence and held that Khasra No. 608, measuring 1-13 Bighas and other land were acquired by the Government. ☐ 1119.14/- were paid to Sadhu as compensation and the possession was handed over to the Block Development Office.

13. I have heard Mr. Deepak Bhasin, learned Senior Advocate for the appellants/plaintiffs and Mr. Navlesh Verma, learned Additional Advocate General for the respondents/defendants. Mr. Deepak Bhasin, learned Senior Advocate for the appellants/plaintiffs submitted that no plea was taken by the defendants regarding the acquisition of the land; therefore, the findings recorded by the learned First Appellate Court will not affect the rights of the parties. Mr. Navlesh Verma, learned Additional Advocate General submitted that the findings recorded by learned First Appellate Court clearly show that the suit land was acquired by the State of H.P.; therefore, the plaintiffs cannot be granted any benefit.

14. I have given considerable thought to the rival submissions and have gone through the record carefully.

Substantial questions of law.

15. The learned First Appellate Court held that the ownership and possession of Sadhu were not proved and the plaintiff being the successor of Sadhu is not entitled to possession on the basis of ownership. The evidence recorded by the learned First Appellate Court on the additional issue clearly shows that an award was passed by the Collector, Land Acquisition, Rampur on 17.12.1965 for the acquisition of Khasra Nos. 604, 610 and 608 measuring 1-13 Bighas. Copy of Form CC (Ext.DW-5/B) shows that Sadhu, S/o Kamlu, had taken a compensation of ☐ 1119.14/- for the land bearing khasra No. 608 measuring 1-13 Bighas. The copy of the Jamabandi for the year 1966-67 (Ext. D-1) shows the name of Sadhu in the column of possession over Khasra No.608, measuring 1-13 Bighas. His name is shown in the column of ownership in the copy of Jamabandi for the year 1976-77 (Ext.D-2). Copy of Missal Hakiyat (Ext.D-4) shows that Khasra No.608 was converted into new Khasra No.1282, measuring 0-13-73 hectares. The name of the plaintiff is recorded in the column of ownership and the name of the Block

Development Office was shown in the column of possession. These documents clearly show that Khasra No. 608 measuring 1-13 Bigha owned by Sadhu and thereafter, by the present plaintiff was converted into new Khasra No. 1282, measuring 0-13-73 hectares. The copy of the award passed by the Land Acquisition Collector clearly shows that Khasra No.608, measuring 1-13 Bigha was acquired by the State of H.P. Copy of Form CC (Ext.DW-5/B) proves that compensation was paid to Sadhu. These documents clearly prove that Sadhu had lost his title after the acquisition and receipt of the compensation and his name was wrongly recorded in the revenue record. Therefore, the conclusion drawn by the learned First Appellate Court that the ownership and possession of the plaintiff were not proved is clearly supported by evidence on record. Hence, no error was committed by the learned First Appellate Court. The substantial question of law is answered accordingly.

Final Order

In view of the above, the present appeal fails and is dismissed, so also pending application(s), if any.