(1985) 01 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 34 of 1984

Kartar Singh Lambardar . APPELLANT

Vs

State of Haryana . RESPONDENT

Date of Decision : 08-01-1985

Acts Referred:

Citation : (1985) 1 CurLJ 241 : (1985) PLJ 100 : (1986) RRR 283

Hon'ble Judges : B.S.Yadav, J

Advocate : Manoj Swaroop, Advocates., Anand Swaroop Mittal, Advocates for appearing Parties

Judgement

B.S. Yadav, J.—It is not necessary to give the facts of the case in detail as the learned Additional Advocate General, Haryana, did not seriously dispute the contention of the learned counsel for the appellant that the case was fit for remand to the lower appellate Court. The brief facts are that the plaintiffappellant is Lambardar of village Nalvi. A sum of Rs.25,201/ was sought to be recovered from him as arrears of land revenue by the Tehsildar, Thanesar. In the suit of plaintiff challenged that order on the ground that no amount was due from him to the defendants on account of collection of land revenue from the various landholders by him as Lambardar and whatever amount he had collected as land revenue and land taxes had been deposited by him in the Treasury. Other grounds were also taken by him but it is not necessary to refer to them. The suit was contested by the defendants i.e. State of Haryana and Tehsildar, Thanesar and inter alia it was pleaded that the jurisdiction of the Civil Court to entertain and decide the present suit was barred in view of section 158 of the Punjab Land Revenue Act, 1887, (for short the Act).

2. The learned trial Court held that the defendants were entitled to recover a sum of Rs. 22,441.83 from the plaintiff. It may be mentioned here that Rs. 2,000/ had already been recovered from the plaintiff. About the jurisdiction of the Civil Court it was held that vide section 3(8) of the Act as amended by Haryana Act 45 of 1973, a Lambardar was a defaulter if he had not deposited in

the Government Treasury the land revenue collected by him and consequently by virtue of section 158(2) Clause (xiv) of the Act the jurisdiction of the Civil Court to entertain and decide the suit was barred. Accordingly, the plaintiffs suit was dismissed.

3. Feeling aggrieved, the plaintiff filed an appeal which was heard by learned Additional District Judge, Kurukshetra. He did not go into the question as to whether any amount was due from the plaintiff or not. He, however, held that as the plaintiff was a Lambardar and fell within the definition of "defaulter", the jurisdiction of the Civil Court was barred. He accordingly dismissed the appeal. Feeling aggrieved, the plaintiff has come to this Court in appeal.

4. The learned counsel for the appellant vehemently argued that the learned lower Appellate Court was wrong in holding that the plaintiff was a defaulter without giving a finding to the effect that he had collected the land revenue and had not deposited the same in the Government Treasury. I am of the opinion that the said argument has force.

5. The land revenue sought to be recovered from the plaintiff relates to the years from Kharif, 1967 to Kharif, 1975. Admittedly, the word "defaulter" as defined in section 3(8) of the Act prior to the Amendment Act i.e. Haryana Act No. 45 of 1973 did not include the headman. However, by the above Amending Act, the definition of "defaulter" was amended as follows :

"(8) `defaulter'' means a person liable for an arrear of land revenue or any tax in lieu thereof and includes,

(i) a person who is responsible as surety for the payment of arrear; and

(ii) a headman or any other person who has collected the land revenue or any tax in lieu thereof but has not deposited the same into the Government treasury."

6. From the above it is clear that only that headman can be said to be a defaulter who has collected the land revenue or any tax in lieu thereof but has not deposited the same in the Government Treasury. The learned lower Appellate Court has not given any finding to the effect that the plaintiff as a headman had collected the land revenue or any tax in question and had not deposited the same into the Government Treasury. He has remarked that as per allegations on record, the appellantplaintiff as headman also fell within the definition of "defaulter". The plaintiff has vehemently denied in the plaint that the amount said to be recovered from him as arrears of land revenue was collected by him and not deposited in the Government Treasury. Therefore, it is not understood how the Court has remarked that as per the allegations on the record the plaintiff fell within the definition of "defaulter".

7. Till it is held that the plaintiff is a defaulter, the jurisdiction of the Civil Court to entertain and decide the suit is not barred by virtue of clause (xiv) of section 158(2) of the Act. In this respect reference can be made to wherein a Division Bench of this Court remarked :

"The next question that arises for determination is whether the suit is triable by the Revenue Court, in case Sardara Singh deceased was not a defaulter. Section 158 of Act deals with the exclusion of jurisdiction of Civil Courts. Clauses (xiv) and (xv) of subsection (2) of the said section are relevant for the determination of the said question and are as follows :

"158. (2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely ... ...

(xiv) any claim connected with, arising out of the collection by the Government, or the enforcement by the Government of any process for the recovery of land revenue of any sum recoverable as an arrear of land revenue;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue.''"

The aforesaid clauses would have applied if Sardara Singh deceased had been liable to pay the said arrears. He, as already held above, was not liable to pay any arrears of the land revenue. In these circumstances, the revenue authorities had no jurisdiction to recover the amount from him."

8. The above observations clearly apply to the present case. Hence, I have no other alternative but to accept the present appeal and set aside the judgment of the learned lower Appellate Court and remand the case to that Court for fresh decision in the light of the above observations. The parties are directed to appear before that Court on 20th February, 1985. Till then no coercive method be used by the defendants against the plaintiff to recover the arrears of land revenue. In the circumstances of the case the parties are left to bear their own costs.