

(2010) 11 SHI CK 0147

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 517 of 2000

Pritam Singh

APPELLANT

Vs

Suhel Singh

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104
Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 27, 28, 29

Citation : (2010) 11 SHI CK 0147

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This Regular Second Appeal was admitted on the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the learned District Judge has misconstrued, misinterpreted jamabandies 1950-51 Ext.P2, 1958-59 Ext.D1, 1964-65 Ext.D2, 1969-70 Ext.D3, 1974-75 Ex. D4, 1979-80 Ext.D5, 1985-86 Ext.D6, 1989-90 Ext.D7 and 1994-95 Ext.D8 and has erred in returning the finding that on suit land previously father of defendant was tenant on payment of 2/5 Batai and later on defendant was tenant on payment of land revenue?

2. Whether learned Distt. Judge has erred in deciding that civil court has no jurisdiction to try the present suit in view of attestation of Ext.P5 mutation No. 1410 on 16.7.1997 when it has been proved on record that this mutation was attested behind the back of the plaintiffs in favour of defendant?

2. Appeal is directed against the judgment and decree, dated 3.7.2000 of learned District Judge, whereby appeal against the judgment and decree, dated 28.12.1999, of learned Sub Judge, 1st Class, has been dismissed, with the findings that Civil Court did not have the jurisdiction to try the suit, though at the same time merits have also been touched and a finding recorded that the

respondent-defendant Suhel Singh was a tenant.

3. Facts relevant for the disposal of appeal may be noticed. Appellant Pritam Singh and his mother Smt. Harnam Kaur, now dead and represented by him (appellant Pritam Singh), filed a suit for declaration that they were owners in possession of land, measuring 3 Bighas 8 Biswas, situate in village Bhatanwali, Tehsil Paonta Sahib and shown by Khasra No. 268 in the Jamabandi for the year 1994-95. It was claimed that the aforesaid land belonged to Munshi Ram, who was a real brother of the father of appellant Pritam Singh and that said Munshi Ram went missing some time in the year 1951 and ever since he had not been heard of. It was further pleaded that said Munshi Ram was a co-owner with appellant Pritam Singh and his mother Smt. Harnam Kaur, in the entire Khata of which suit land, bearing Khasra No. 268, is a part and that in the year 1957 appellant and his mother Smt. Harnam Kaur sold their share in the joint Khata to respondent-defendant Suhel Singh's father for a consideration of `1000/-. It was also stated that at the time of sale of their share, appellant Pritam Singh and his mother Smt. Harnam Kaur, handed over possession of the suit land, which was part of Munshi Ram's share, as licensees, with an understanding that in case Munshi Ram appeared, possession of the said land will be handed over to him and that in case his whereabouts remained unknown for long time, possession would be returned to appellant Pritam Singh and his mother Smt. Harnam Kaur.

4. It was alleged that in the year 1997, plaintiffs came to know that mutation of conferment of proprietary rights, in respect of the suit land, had been attested in favour of respondent Suhel Singh, on the basis of wrong entry in the revenue papers, showing him as a tenant. It was also alleged that Suhel Singh, on being asked to deliver the possession, refused to do so. So, in addition to seeking a decree of declaration, decree for possession of suit land was also sought.

5. Suit was contested by the respondent, who claimed that he was a tenant. It was claimed by him that Munshi Ram had inducted his father as tenant in the year 1957 and that by way of rent he had agreed to pay money equivalent to revenue payable in respect of the suit land. Mutation of conferment of proprietary rights was alleged to have been rightly attested in favour of the respondent, because of his being a tenant.

6. Learned trial Court framed various issues, based on the pleadings of the parties and at the end of the trial, held that the respondent was a tenant under the plaintiffs. However, it was held that mutation of conferment of proprietary rights had been attested without issuing any notice to the plaintiffs and, therefore, the same was bad. Mutation was, therefore set aside and suit decreed to the extent that mutation, conferring proprietary rights in favour of the respondent Suhel Singh, was bad. However, plaintiffs' suit for other reliefs was dismissed.

7. Appeal carried by the plaintiffs to the Court of District Judge stands dismissed. Learned District Judge has held that Munshi Ram himself had inducted the father

of the respondent-defendant as tenant on payment of rent, in kind, in the form of share of produce, to the extent of 2/5th of the total produce and, so, he was a tenant. At the same time, learned District Judge has held that Civil Court did not have the jurisdiction.

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

9. It needs to be stated at the very outset that when the learned District Judge returned the finding that Civil Court did not have the jurisdiction, he ought not to have returned any finding, touching merits of the case, that is to say, whether the respondent was a tenant as claimed by him or a licensee as alleged by the plaintiffs. He should have ordered return of the plaint, with liberty to the plaintiffs to seek their remedy by approaching the appropriate forum, if so desired.

10. Similarly, when the trial Court set aside the mutation, holding that the same had been sanctioned without issuing a notice to the plaintiffs, it ought not to have given any finding on merits and should have directed the parties to approach Land Reforms Officer, to proceed afresh in the matter of conferment of proprietary rights upon the respondent-defendant, in accordance with the provisions of Section 104 of H.P. Tenancy and Land Reforms Act as also Rules 27, 28 and 29 of H.P. Tenancy and Land Reforms Rules.

11. Coming to substantial questions of law, on which appeal was admitted, finding of the first appellate Court that father of the defendant-respondent was inducted as a tenant, on payment of rent in kind, is based upon misreading of Jamabandi for the year 1950-51, copy Ext. P-2. In the said Jamabandi, two brothers, by the names of Gurbachan Singh and Gurbakhash Singh are recorded as tenants, under Munshi Ram. Learned District Judge has held that defendant Suhel Singh is son of Gurbachan Singh, one of the two brothers, recorded as tenants. That is not correct. Defendant's father's name is not Gurbachan Singh, but Gurchain Singh son of Ram Singh, per Suhel Singh's own testimony. Gurbachan Singh and Gurbakhash Singh, recorded as tenants under Munshi Ram in the Jamabandi for the year 1950-51, copy Ext. P-2, are sons of one Sher Singh. It is this misreading of the name of the father of defendant Suhel Singh, by the first Appellate Court, that a finding has been returned that respondent's father was inducted as tenant on payment of rent in kind (share of produce).

12. In any case, as already noticed, when the first Appellate Court had concluded that Civil Court did not have the jurisdiction, it ought not to have returned any finding, touching merits of the case and the finding returned by it is of no consequence, being without jurisdiction and as such it is nonest. Substantial question of law No. 1 is answered accordingly.

13. So far as the second substantial question of law, on which the appeal was admitted, is concerned, as already indicated hereinabove, question whether respondent-defendant Suhel Singh is or is not a tenant, is required to be determined by Land Reforms Officer, acting as Assistant Collector 1st Grade,

under the provisions of H.P. Land Revenue Act, as provided in Rule, 29 of H.P. Tenancy and Land Reforms Rules.

14. Trial Court returned the finding that mutation attested by the Land Reforms Officer was bad, on account of plaintiffs having not been issued any notice before attestation of mutation. Under these circumstances, right course is to return the plaint for want of Civil Court's Jurisdiction and to direct the Land Reforms Officer, to proceed with the mutation of conferment of proprietary rights, afresh. It is ordered accordingly. Appeal is disposed of accordingly.