
(2011) 07 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 216 of 2000

Punni Devi and Others

APPELLANT

Vs

Hans Raj and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Punjab Tenancy Act, 1887 — Section 36

Citation : (2011) 07 SHI CK 0047

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This appeal has been preferred against the judgment of reversal passed by the learned District Judge, dismissing the suit of the Plaintiffs Ram Lal, Vaneet Nag, Atul Nag, Jagan Nath, Kishori Lal and Surinder Nath.

2. The Plaintiffs had approached the learned trial Court praying for a decree of declaration and consequential relief of permanent prohibitory injunction restraining the Defendants from interfering in the suit land. The case set out by the Plaintiffs in the learned trial Court is that the suit land was owned and possessed by the Plaintiffs and the entry of possession in favour of Defendants No. 1 and 2 was wrong. Relief was claimed on the settled issue No. 3 that the tenancy with respect to the suit land had been relinquished by the father of the Defendants in favour of the Plaintiffs and the proforma Respondents.

3. On the evidence on record, the learned trial Court partly decreed the suit of the Plaintiffs to the effect that they are not entitled to a decree of permanent prohibitory injunction, but a decree for possession was passed in favour of the Plaintiffs.

4. The point for consideration before the learned appellate Court was that whether Ex.PW-2/A, which was writing executed by the predecessor-in-interest of the Defendants relinquishing tenancy in favour of the Plaintiffs, was valid and

binding and whether it had been acted upon. The learned District Judge, holds; (a) that Ex.PW-2/A has been executed on plain paper and is not registered and accordingly could not be admitted in evidence and (b) that the document was executed on 15.6.1967 and it had not been acted upon by the parties. The suit was accordingly dismissed.

5. This appeal has been admitted on 9.5.2000 on the following substantial questions of law:

1. Whether the impugned judgment and decree is a result of misappropriation and misinterpretation of oral as well as documentary evidence and the same has resulted in miscarriage of justice?

2 Whether Id. Appellate Court was justified in holding that Ex.PW-1/A requires registration whereas section 36 of the Punjab Tenancy Act, 1887 does not say that such document requires any registration?

3 whether the impugned judgment and decree is based upon those documents which were not produced by any of the parties

Question No. 3:

6. Question No. 3 does not call for any determination as it begs itself.

Questions No. 1 & 2:

7. Both these questions are taken up together for consideration. Learned Senior Counsel appearing for the Appellants urges that Section 36 of the Punjab Tenancy Act does not provide for registration of a document for relinquishment of tenancy for the reasons that two modes have been proved for relinquishment, namely, either in writing or orally. The provision reads:

Section 36: Relinquishment by any other tenant:

(1) Any other tenant may relinquish his tenancy by giving verbally or in writing to his landlord, or to his landlord's agent, on or before the fifteenth day of January in any year, notice of his intention to relinquish the tenancy at the end of the agricultural year then current.

(2) The tenant may, instead of, or in addition to giving the notice in the manner mentioned in Sub-section (1), apply to a Revenue Officer on or before the date aforesaid to cause the notice to be served on the landlord, and the Revenue Officer on receiving the cost of service from the tenant, shall cause the notice to be served as soon as may be.

(3) If the tenant does not give notice in the manner prescribed in this section, he shall be liable to pay the rent of this tenancy for any part of the ensuing agricultural year during which the tenancy is not let by the landlord to some other person or is not cultivated by the landlord himself.

8. It is undisputed before me that it is this provision which was applicable at the

time when Ex.PW 2/Awas executed. Learned Counsel appearing for the Respondents relies upon the decision of this Court in Paras Ram and Ors. v. Bhuru 1973 SLJ HP 60 and Shri Saran Dass and Ors. v. Smt. Situ and Ors. 1986 SLJ HP 139 to urge that relinquishment deed requires compulsory registration. I am not persuaded to hold on this ratio of the judgment that it lays down any such law for the reasons that the judgment was passed on a concession. Two other decisions in Nadig Neelakanta Rao v. State of Mysore and Ors. AIR 1960 Mys 87 and M.S. Ram Singh Vs. Bijoy Singh Surana and Another, have been relied upon by the learned Counsel appearing for the Respondents to urge that registration is compulsory even though relinquishment may be oral.

9. The appeal can be disposed of without entering into this aspect of the matter for the reasons that the learned District Judge on the evidence on record holds that even if this document is accepted as relinquishment, acknowledging the possession of the predecessor of the Respondents, this document was never acted upon. This finding of the learned Court is based on reading of the entire evidence consisting of the venue record which, according to the learned District Judge, is that it is the Defendants who are in possession of this land. That being a finding of fact, I see no reason to interfere with the conclusion arrived at by the learned District Judge that the relinquishment was never acted upon.

10. There is, thus, no merit in this appeal which is accordingly dismissed. The judgment and decree of the learned District is upheld and affirmed.