

(1999) 07 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No's. 186 of 1993

Purshotam Singh and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 100
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 23, 23(1), 23(2), 24, 24(1)
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 43
Punjab Tenancy Act, 1887 — Section 50

Citation : (2000) 1 ShimLC 28

Hon'ble Judges : D. Raju, C.J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; M.S. Guleria, D.A.G. for Respondent Nos. 1 to 3 and Neeraj Gupta, vice Bhupender Gupta, in R.S.A. Nos. 186 and 192 of 1993 and for Respondent No. 5 in R.S.A. No. 190 of 1993, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—These four second appeals have been dealt with together in common since not only they involve identical questions of law for consideration but except the private party-Respondents who are tenants are different since they relate to different items of property, the other parties are one and the same.

2. The Plaintiffs in all these cases have filed suits for a declaration to the effect that they are owners in possession of the lands which were the subject matter of the respective suits and that the proceedings initiated by the Consolidation Officer and the orders passed by the Additional Director, Consolidation" of Holdings to put the respective tenants in possession of the lands are illegal and without jurisdiction, with also a consequential relief prayed for injunction against the Defendants. The learned trial Judge came to the conclusion that there was no iota of evidence produced in the cases to prove that the land owners and the tenants entered into any agreement to enter into possession of the holdings

allotted to them and that the tenants were put in possession of the property and, therefore, the cases on hand fell within the ambit of Section 23(2) of the Act. In the light of the said findings the Civil Court was held not to have any jurisdiction in the matter and consequently the suits came to be dismissed.

3. On appeals filed by the Plaintiffs before the learned District Judge, Kangra at Dharamshala, the learned first Appellate Judge adverted to the decision of this Court reported in S/Sh. Suram Singh, Bhawan Singh and Ors. v. State of Himachal Pradesh and Ors. 1976 SLJ HP 100 and felt bound by the principles laid down therein, not only concurred with the factual issues framed and findings recorded by the learned trial Judge but on the view that the Civil Court has no jurisdiction chose to modify the judgment of the learned trial Judge by directing return of the plaints under Order 7, Rule 10 of the CPC setting aside thereby the order of the learned trial Judge dismissing the suits. Not satisfied, the above appeals came to be filed in this Court by the Plaintiffs.

4. Heard Mr. K.D. Sood, learned Counsel for the Appellants, Mr. M.S. Guleria, learned Deputy Advocate General, for the official party-Respondents and Mr. Neeraj Gupta, learned Counsel for the respective Respondents-tenants in these appeals. The learned Counsel for the Appellants while elaborating the substantial question of law formulated for consideration in the appeals contended that the construction placed by the courts below on the relevant scope and applicability of Section 23(1) and Section 23(2) of the Act was not the correct interpretation to be placed and that the courts below also mis-construed and ignored from consideration the relevant materials in recording the factual finding relating to the delivery of possession. Argued, learned Counsel further that the Consolidation Officer had become functus officio and had no jurisdiction to deliver the possession of the property in the facts and circumstances of the case and consequently the suits could not have been dismissed as have been done by the courts below. Per contra, learned Deputy Advocate General as also Mr. Neeraj Gupta, learned Counsel while adopting the reasoning of the courts below with equal force and vehemence pleaded that no exception could be taken to the well merited factual findings as also the construction placed by the courts below on the scope of Section 23 and its various limbs of the Act in question and no interference whatsoever is called for in these appeals at the instance of the Appellants-Plaintiffs. Learned Counsel for the Respondents also invited my attention to the decision reported in 1976 S.L.J. 100 (supra) which has been strongly relied upon by the learned First Appellate Judge and contended that the said decision is directly in point and apply with all force to these cases also and consequently there are no merits whatsoever in the appeals.

5. Learned Counsel appearing on either side invited my attention to the relevant portions of the judgments of the courts below in support of their respective stand and the provisions contained in Sections 23 and 24 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") which Act indisputably apply to the cases on hand.

6. So far as the claim of the Plaintiffs in all these cases that in accordance with the repartition as finally sanctioned, announced and published, the respective tenants/Respondents have entered into possession of the lands in dispute, they having been allegedly delivered possession by the field staff, is concerned, both the learned trial Judge as well as the learned first Appellate Judge have gone into the oral and documentary evidence on record and concurrently recorded the findings that the oral evidence of the Plaintiffs is not only self contradictory but do not merit acceptance by any court of law and rejecting the claim projected by the Plaintiffs further on the basis of Misal Haquiat prepared in 1970-71 held that the Defendants-tenants were not placed in possession of the lands respectively allotted to them. It is on the basis of such factual finding recorded in all these cases, it was also held that the question of the tenants having allegedly relinquished, their tenancy rights and possession, did not arise at all and, therefore, since Section 23(2) applied to the cases on hand the relief claimed for and the suits filed in respect of the same cannot be maintained. In spite of strenuous efforts and contentions raised for the Appellants the learned Counsel could not succeed in pointing out any infirmity either of law or on facts which would justify this Court, in exercise of its jurisdiction u/s 100 of the Code of Civil Procedure, sitting as the Second Appellate Court to interfere with concurrent and categorical findings of facts relating to the non-delivery of possession to the tenants in all these cases. Hence, the other claims of the Plaintiffs have to be considered in the light of the said factual finding in respect of not only scope of Section 23 but the applicability or otherwise of Section 23(2) of the said provision of the Act.

7. The Respondents, in my view, are well justified in placing reliance upon the decision reported in 1976 S.L.J. 100 (supra) as has been done by the learned First Appellate Judge in these cases since in my view the issue relating to the relative scope, operation and applicability of the various limbs of Section 23 as also the impact of the same on the provisions contained in Section 24 seem to have been extensively and elaborately considered by the then learned Chief Justice of this Court which is found to apply to all these cases, on all-fours. It was held in the said decision on the scope of Section 23 as follows:

Section 23(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act provides that if all the owners and tenants affected by the repartition do not agree to enter into possession they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer, and published in the prescribed manner in the estate or estates concerned, and the Consolidation Officer shall, if necessary, put them in physical possession of the holdings to which they are so entitled, and for doing so he may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887. Section 24(1) provides that as soon as the persons entitled to possession of holdings under the Act have entered into possession of the holdings respectively allotted to them the scheme shall be deemed to have come into force. Admittedly, the tenants were not given

possession of the land allotted to them. It seems from the material on the record that was not because of any default on the part of the tenants. It also appears that the Petitioners entered into possession of the land although they had no right to do so. That being so, it cannot be said that the requirement of Section 23(2) binding the Consolidation Officer to deliver possession to the tenants was complied with. In the circumstances, the provisions of Section 24(1) are not satisfied. The persons entitled to possession have not yet entered into possession, and it cannot be said then that the scheme has come into force. The Consolidation Officer was bound to deliver possession to the tenants, and that was a duty to be discharged by him under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. It is not disputed that the East Punjab Act continues to operate inasmuch as the area originally formed part of the erstwhile State of Punjab and has been governed all along by the East Punjab Act. The tenants are entitled to invoke the jurisdiction of the Consolidation Officer, and the Consolidation Officer has power u/s 23(2) of the East Punjab Act to take all such proceedings necessary for delivery of possession. I am supported in this view by *Hartej Bahadur Singh v. The State of Punjab*. The provisions of Section 50 of the Punjab Tenancy Act and Section 43 of the Himachal Pradesh Tenancy and Land Reforms Act do not come into operation at all. They cannot be applied to cases where a tenant has not been given possession as required by Section 23(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. The latter is a special enactment and cases expressly covered under it are governed, in the matter of delivery of possession, by Section 23 of the Act. Consequently, the period of limitation specified in Section 50 of the Punjab Tenancy Act and Section 43 of the Himachal Pradesh Tenancy and Land Reforms Act cannot be invoked by the Petitioners. with respect, I am entirely in agreement with the said exposition of law.

8. In view of the above, there are absolutely no merits whatsoever in the above appeals and since the construction placed by the courts below on the relative scope of Section 23 of the Act, being found also to be in conformity with the law declared by this Court, no interference is called for in these appeals at the instance of the Plaintiffs. These appeals, therefore, fail and shall stand dismissed. No costs.

Interim orders, if any , are vacated.