

(2011) 07 SHI CK 0155

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 351 of 2001

Ramesh Chand (Since Deceased) through his L.Rs. Kamlesh Kumari and Others APPELLANT

Vs

Vaneet Kumar and Others RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 — Section 57

Citation : (2011) 07 SHI CK 0155

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—This is the Defendants' Regular Second Appeal filed u/s 100 of the Code of Civil Procedure.

2. The appeal was admitted on the following substantial questions of law:

1. Whether in view of the specific bar created under the H.P Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the jurisdiction of the Civil Court was barred to go into the validity of the orders passed in the proceedings under the Act, the suit on such account was not maintainable and more particularly when there were no pleadings made by the Plaintiff Respondents that the authorities had acted beyond their jurisdiction or acted contrary to the fundamental principles of judicial procedure?.

2. Whether the learned Lower Appellate Court has relied upon inadmissible evidence, by putting undue reliance on the entries in the Jamabandis, presumption of truth to which stood rebutted on account of the order passed by the competent authority made after detailed enquiry holding the Defendant Appellant to be in possession of the Khasra No. 478?.

3. Whether the Lower Appellate Court has exceeded its jurisdiction in granting

the relief of injunction to the Plaintiff Respondents when the Plaintiff Respondents had failed to prove their possession over Khasra No. 478. More particularly when the Lower Appellate Court has based its conclusions on the fact of possession merely on the revenue record presumption of which stood rebutted on the record by overwhelming oral and documentary evidence produced by the Defendant Appellant?.

4. Whether the suit filed by the Plaintiff Respondents was liable to be dismissed on account of non-joinder of necessary parties? When the Plaintiff-Respondents themselves pleaded that there were other persons who were in possession over Khasra No. 474 and that besides the Defendant Appellant, there were other persons who owned the suit land, have not both the courts below acted without jurisdiction to decide the suit in the absence of such necessary parties?.

5. Whether the Lower Appellate Court has misread the documentary evidence proved on the record of the case more particularly the order passed by the Consolidation Officer, the report Ex. DW2/B, which amply proved the possession of the Defendant Appellant as such the Plaintiff Respondents were not entitled to the relief of injunction?.

3. Original Plaintiff Tarlok Chand filed suit for permanent prohibitory injunction against Defendant Ramesh Chand on the premise that possession of the Plaintiff along with his brother is recorded on the shop constructed over Khasra No. 474 and also that they were possessed with land comprising Khasra No. 478 and that Defendant is interfering with the same. Defendant resisted the suit, inter alia, on the ground that entries recorded in the revenue record reflecting the Plaintiffs' possession were wrong, false and incorrect and that much prior to the filing of the suit, Defendant had already initiated appropriate proceedings for rectification of the revenue record under the provisions of H.P Holdings(Consolidation and Prevention of Fragmentation) Act, 1971(hereinafter referred to as "the Act").

4. Based on the pleadings of the parties, trial Court framed the following issues:

1. Whether the Plaintiffs are entitled to the relief of injunction as prayed for?

....OPP

2. Whether Plaintiff and his brother are in possession of shop as owner as alleged?

....OPP

3. Whether the Plaintiffs are the tenants of the shop as alleged?

...OPD

4 Whether the Plaintiffs have no cause of action and locus stand to sue?

...OPD

5. Whether the suit is not legally and factually maintainable in the present form

as alleged?

...OPD

6. Whether the act, conduct, acquiescence and silence of the Plaintiffs is a bar to the present suit?

...OPD

7. Whether the civil court has got no jurisdiction?

...OPD

8. Whether the revenue entries in the name of Plaintiffs are wrong, illegal, unauthorized and without jurisdiction as alleged?

...OPD

9. Whether the suit is bad for its multifariousness and misjoinder and nonjoinder of parties and cause of action?

...OPD

10. Whether the suit is within time?

...OPP

11. Relief.

5. Trial Court decreed the suit in the following terms:

In view of the afore discussed evidence and the decision arrived at while deciding issue No. 1 to 10, the suit of the Plaintiff is partly decreed for permanent prohibitory and mandatory injunction against the Defendant directing him not to interfere over the possession of the Plaintiffs over the shop situated over Khasra No. 474 out of the suit land bearing Khata No. 44 Min Khatauni No. 117, Khasra Nos. 474, 478 Plots 2 area measuring 0-04-55 Hects. situated at Mohal Kahlia Mauza Lanj Teh. & Distt. Kangra so far as the rest of the property is concerned, qua that as afore discussed, no relief can be given. Accordingly, it is disallowed. Thereby the suit of the Plaintiffs is partly decreed and partly dismissed. However, there is no order as to costs. Decree sheet be drawn up accordingly and the file after due completion be consigned to the Records.

(Emphasis supplied)

6. Defendant accepted the decree, but however legal heirs of Tarlok Chand (original Plaintiff) filed an appeal before the District Judge. In terms of judgment and decree dated 12.03.2011 passed by District Judge, Kangra at Dharamshala, Plaintiffs' appeal stands allowed and the suit decreed in to.

Reasons adopted by the lower Appellate Court are as under:

20. From the above discussion, it is clear that the land was recorded in

possession of the original Plaintiff and his brother in the copy of jamabandi for the year 1995-96. However, a correction application was filed before the Consolidation Officer, the copy of which is Ex.P2 and the report is on the back of this application, which is also exhibited as Ex.DW2/B and the same was got proved from the statement of DW2 Shri Bhola Ram. It is clear from the said report of Bhola Ram that he had recommended that Khasra No. 478 be entered in the name of the owners instead of the tenant. A perusal of the final order Ex.P2, passed on this report, shows that it was observed by the Consolidation Officer that without recording the statements of the parties, no correction can be made and, therefore, the objections were dismissed. These objections were filed by the Defendant and not by the Plaintiff and it is clear that the said correction application filed before the Consolidation Officer was never implemented or allowed. Therefore, the learned trial court had wrongly observed that the order of the Consolidation Officer was for correction and that it has become final since no appeal was preferred by the Plaintiff. A perusal of the statement of DW2 Bhola Ram also shows that the Consolidation Officer had not passed any order for correction and without his order, no correction could be made. Thus, once no correction could be made, no benefit could be taken by the Defendant on the basis of the report submitted by ACO, since his objection or the application for correction was not allowed by the Consolidation Officer. Once the said report was not allowed by the Consolidation Officer, it leads to the inference that the presumption of correctness is attached to the entries in the copy of jamabandi for the year 1975-76, which are in favour of the Plaintiff and these stands unrequited. Therefore, the version of the Plaintiffs, who are widow and children of the original Plaintiff, has to be accepted as correct that the Defendant is unlawfully trying to interfere in their possession in one way or the other. There is no documentary evidence in favour of the Defendant except the report of ACO, which was not accepted by the Consolidation Officer. On the other hand, there is copy of jamabandi entry in favour of the Plaintiffs and the presumption of correctness is attached to the entries in the revenue record. Therefore, the findings of the learned trial court declining the relief of injunction in so far as it relates to the land comprised in Khasra No. 478 is concerned, are liable to be reversed and the Plaintiffs are held to be entitled to the relief of injunction in regard to the land of Khasra No. 478 also. This point is accordingly decided in favour of the Appellants-Plaintiff and as against the Respondent-Defendant.

7. There is no dispute that prior to the institution of the suit, that is, 31.5.1993, Defendant had initiated proceedings for rectification of the revenue record. The Assistant Consolidation Officer appointed under the Act, visited the spot and reported that Plaintiff was not in possession of Khasra No. 478 but in fact it was the original owner, that is the Defendant who was in possession thereof. This report is Ext.DW2. Now importantly Plaintiffs were not present at the spot when the same was prepared, though notices thereof were issued to them. However the report was forwarded to the appropriate authority for necessary action vide document Ext.P2. Significantly, proceedings initiated by the Defendant could not

be finalized for want of presence of the Plaintiff(s) and no final order in favour of the Defendant was ever issued by the authorities. Since the authorities came to the conclusion that Defendant's application could not be allowed for want of presence of the Plaintiff(s), Defendant also raised objections which also were not finalized. There is nothing on record to show that Defendant pursued the matter thereafter. No final order was ever passed by the authorities under the Act. Thus in view of the aforesaid position, no substantial right under the Act had either accrued or pursued conclusively by the Defendant and in my considered view, no substantial question of law arises for consideration in the present appeal.

8. Section 57 of the Act reads as under:

Jurisdiction of civil court barred as regards matters arising under this Act.- No person shall institute any suit or other proceedings in any civil court with respect to any matter arising out of the consolidation proceedings or with respect to any other matter in regard to which a suit or application can be filed under the provisions of this Act.

Plaintiffs' suit was for injunction only.

9. In the absence of finalization of the proceedings under the Act, entries reflected in the revenue record have been rightly considered to be in favour of the Plaintiffs by the lower Appellate Court.

10. It cannot be said that the Courts below exceeded the jurisdiction in granting relief on the comparative consideration and appreciation of the evidence led by the parties. It also cannot be said that Plaintiffs had failed to prove their possession over Khasra No. 478. Report prepared by the Assistant Consolidation Officer was in the absence of the Plaintiffs.

11. With regard to question No. 5, Defendant himself had accepted the findings, hence he cannot be allowed to raise the same in these proceedings.

12. From the record it cannot be said that there is illegality or perversity in the findings arrived at by the lower Appellate Court in decreeing the Plaintiffs' suit.

13. For the aforesaid reasons, the appeal stands disposed of.