
(1965) 03 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 8 of 1963

Romesh Chand and Others

APPELLANT

Vs

Kirpu and Others

RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 49, 50, 51

Citation : AIR 1965 HP 58

Hon'ble Judges : Om Parkash, J.C.

Bench : Single Bench

Advocate : Harish Chander, for the Appellant; Kanshi Ram, for the Respondent

Final Decision : Dismissed

Judgement

Om Parkash, J.C.

1. The dispute, in this appeal, which is directed against a decree of the District Judge, Bilaspur, whereby an appeal, against a decree of the Senior Subordinate Judge, Bilaspur, was allowed and the suit of the appellants was dismissed, relates to land, measuring 49 Bighas and 11 Biswas, situated in village Bagi. The land was owned by the Government and the appellants were its occupancy-tenants. The land was being cultivated by Pauna, as a tenant-at-will, under the appellants. Appellants Nos. 1 to 8 had brought a suit, against Pauna and the respondents, sons and other relatives of Pauna, for the issue of a permanent injunction, and in the alternative for possession of the land. Appellant No. 4, who was studying in a college, at Simla, was impleaded as a pro forma defendant, in the suit. The allegations, in the suit, were that Paunu had, on the 18th March, 1959, by a registered deed, relinquished his tenancy rights and had also surrendered possession of the land in favour of the appellants, that after relinquishment, Paunu had no interest in the land, but that he and the respondents were unlawfully interfering with the possession of the appellants. It was prayed that Paunu and the respondents may be restrained, by the issue of a

permanent injunction, from interfering with the possession of the appellants. In the alternative, it was prayed, that if Paunu and the respondents were to take possession of the land during the pendency of the suit, then possession may be restored to the appellants.

2. The suit was contested by Paunu and the respondents. They admitted that Paunu was a tenant under the appellants, but denied that he had ever relinquished his tenancy rights or had surrendered possession of the land. It was pleaded, that the document, dated the 18th March, 1959, was got executed by the appellants, through fraud and misrepresentation.

3. The learned Senior Subordinate Judge held that Paunu had executed the relinquishment deed Ex. P. W. 1/A, dated the 18th March, 1959, that he was not subjected to any fraud or misrepresentation and that he had not surrendered possession of the land. The learned Senior Subordinate Judge, further, held that the mere execution of the relinquishment deed operated to extinguish the tenancy rights of Paunu and that he had ceased to be a tenant and that the appellants were entitled to get possession of the land. So, the learned Senior Subordinate Judge passed a decree for possession of the land in favour of the appellants.

4. On appeal, by Paunu and others, the learned District Judge disagreed with the view of the Senior Subordinate Judge that the mere execution of the relinquishment-deed Ex. P. W. 1/A was tantamount to the relinquishment of tenancy rights, by Paunu. The learned District Judge was of the opinion that to be, effectual, the relinquishment deed should have been accompanied by surrender of possession. As Paunu had not surrendered possession of the land, the learned District Judge held that there was no relinquishment of tenancy rights and the appellants were not entitled to get possession of the land. The learned District Judge allowed the appeal, and after setting aside the decree of the Senior Subordinate Judge, dismissed the suit of the appellants.

5. The appellants have filed the present second appeal against the dismissal of their suit. Paunu died during the pendency of the appeal. His name was struck off, as all his legal representatives were already on the record, as respondents.

6. The only point, which requires decision, in the appeal, is whether Paunu had relinquished his tenancy rights. It is not, in dispute, that Paunu had executed the relinquishment-deed Ex. P. W. 1/A, on the 18th March, 1959. The execution of the deed stood proved by the evidence of Sant Ram P. W. 6, the scribe, and Kishan Singh P. W. 1, one of the marginal witnesses. There is nothing on the record to show that the relinquishment-deed was got executed through fraud or misrepresentation. The plea of the appellants that Paunu had surrendered possession of the land has not been substantiated. The appellants had produced oral evidence to prove that they had been cultivating the land after the execution of the relinquishment deed. That evidence has not been believed by both the lower Courts. I see no reason to differ from them. The oral evidence, adduced by

the appellants, is in conflict with the entries in the revenue records, wherein Paunu is shown, as cultivating the land as a tenant, even after 18th March, 1959. The fact, established in the case, is that Paunu had executed the relinquishment-deed Ex. PW. 1/A, but had not surrendered possession of the land. The question to be decided is whether the bare execution of the relinquishment-deed, by Paunu, without surrender of actual possession of land, operated as relinquishment of his tenancy rights.

7. The relations, between a landlord and a tenant, with respect to a tenancy in land, in Himachal Pradesh, are governed by the provisions of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, (hereinafter referred to as the Himachal Act). The provisions of the Transfer of Property Act, relating to leases, are not applicable to tenancies in land, in Himachal Pradesh, vide *Sureshwari Datt v. Parma*, A I R 1963 Him Pra 34. Sections 49 to 51 of the Himachal Act refer to relinquishment of his tenancy by a tenant. Section 49 lays down that a tenant holding for a fixed term under contract or decree or order of competent authority may relinquish his tenancy without notice at the end of that term. Admittedly, Paunu was not a tenant, holding for a fixed term. The provisions of Section 49 do not apply to his case. Section 50 reads as follows:--

"(1) Any other tenant may relinquish his tenancy by giving in writing to his landlord, or to his landlord's agent on or before the 15th 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 subsection (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 notice to be served as soon as may be.

(3) If the tenant does not give the notice in the manner prescribed in this section, he shall be liable to pay the rent of his 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. Section 51 is to the effect that a tenant cannot without the consent of the landlord, relinquish a part only of his tenancy.

9. A perusal of Sections 50 and 51 makes it clear that the provisions, contained therein, are designed for the benefit, and protection of the interest of a landlord. The aforesaid sections do not throw any light on the point as to what will constitute relinquishment of his tenancy, by a tenant. They do not indicate, in the least, that a mere execution of the relinquishment deed will operate as relinquishment of the tenancy. Sections 50 and 51 of the Himachal Act are not of any help in deciding the point, raised in the present.

10. One thing is clear that relinquishment of his tenancy by a tenant, puts an end to the relationship of landlord and tenant. It will be, therefore, relevant to examine how that relationship comes into existence. In this connection, the oft-quoted passage, from the judgment of Plowden J., in *Joti v. Maya* 44 Pun Re 1891 (FB) may be cited:--

""The conclusion his Lordship observed, to which I come from all these considerations is that to establish the complete relation of landlord and tenant between two persons in respect of land, within the meaning of the Tenancy Act, it is essential that two things shall concur, viz. (1) a right to enter upon and possess the land, and (2) an entry into possession. Upon entry, and not before the person having the right becomes a "tenant" and "holds" the land under the person called the landlord."

11. The above observations were made by his Lordship in a case, under the Punjab Tenancy Act. That Act was in force in Himachal Pradesh, before the enactment of the Himachal Act. The definitions of "tenant", "landlord" and "tenancy" are substantially the same in both the Acts. The observations of his Lordship are therefore, applicable to the establishment of the relationship of landlord and tenant, under the Himachal Act. To constitute a complete relationship of landlord and tenant, the tenant must have a right to enter upon and possess the land and must have entered into possession. Conversely, it may be said, that the relationship of landlord and tenant will come to an end when the tenant loses the right to enter upon the land and also vacates or surrenders possession. It follows that, for relinquishment of a tenancy it is necessary that the tenant should actually surrender possession of the land or do all what he can do to surrender possession. Unless and until that is done the relinquishment of tenancy will not be complete and the relationship of landlord and tenant will not come to end. A mere execution of a relinquishment-deed, by a tenant, without surrender of possession will not operate as relinquishment of tenancy rights. There is authority for this view. It was held in *Amar Nath Singh v. Har Prasad Singh* AIR 1932 Oudh 79, that the relinquishment of a holding merely in writing is ineffectual in law, if there has been no surrender of possession of the holding by the tenant to the landlord, accompanying the relinquishment. The facts, in that case, were almost on all fours with the present case. The defendant-tenant had executed a registered deed of relinquishment of their tenancy rights in favour of the plaintiff-landlord, though actually they had not surrendered possession of the land. The plaintiff-landlord brought a suit for possession of the land. His suit was dismissed and the dismissal was upheld by the High Court.

12. The authorities, *Wasal v. Harnam Singh* AIR 1949 E P 53 (FB) and *Puran Chand v. Rent Control and Eviction Officer, Kanpur* 1959 All LJ 343 relied upon by the learned counsel for the appellants, do not lay down that relinquishment of a tenancy can be effected without surrender of possession. The authorities are also distinguishable on facts, from the present case. The facts, in AIR 1949 E P 53 (FB) were that Wasal and his nephews, Fazal Din and Fateh, din, were joint

tenants of land under Guru Amar Singh, father of Guru Harnam Singh. Guru Amar Singh had a notice of ejectment served on Wasal and Fazal Din and Fateh Din. Wasal brought a suit to contest the aforesaid notice. Fazal Din and Fateh Din did not join in the suit and were impleaded as defendants. They filed a written statement stating that they did not want to contest the notice of ejectment. The suit of Wasal was ultimately decreed in respect of the entire land, including the share of Fazal Din and Fateh Din and the notice of ejectment was cancelled. Guru Harnam Singh brought a suit against Wasal for possession of Fazal Din and Fateh Din's half share in the land, alleging that they had surrendered their interest in the tenancy and he was consequently entitled to possession of the aforesaid share. Fazal Din and Fateh Din supported the claim of Guru Harnam Singh. On these facts, their Lordships had held that though the surrender by Fazal Din and Fateh Din of their interest in the land, held by them, could properly and legitimately be taken to take effect as a transfer of such interest, yet it did not and could not result in a partial extinction of the tenancy. The suit for possession, filed by Guru Harnam Singh, was dismissed. It is clear that the surrender by Fazal Din and Fateh Din of their interest in the tenancy was not treated by their Lordships as relinquishment of the tenancy.

13. The case 1959 All L J 343 (supra), was under the U. P. (Temporary) Control of Rent and Eviction Act. The case did not relate to an agricultural lease.

14. The conclusion from the above discussion is that mere execution of a relinquishment-deed of his tenancy, by a tenant, without surrender of possession, of the land, does not operate as relinquishment of his tenancy rights. The tenant will be entitled to remain in possession. In the instant case, the mere execution of the relinquishment deed Ex. PW-1/A by Paunu, without surrender of possession of the land, did not operate as relinquishment of his tenancy rights in the land. He was entitled to remain in possession, as a tenant. The appellants were not entitled to get possession of the land on the basis of the relinquishment-deed. The learned District Judge was right in dismissing the suit of the appellants. The appeal fails and is dismissed with costs.