

(2018) 01 SHI CK 0070

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 199 OF 2005

Sanjay Saini

APPELLANT

Vs

State Of H.P.

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Tenancy And Land Reforms Act, 1972 — Section 104

Citation : (2018) 1 ShimLC 573

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : G.D. Verma, B.C. Verma, Vivek Singh Attri

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant appeal stands directed against the concurrently recorded verdicts, of, both the learned Courts below, whereby, they dismissed the suit of the plaintiff, wherein, he claimed rendition, of, a decreeto the effect that the order, of, 25.3.1997 rendered by the District Collector, Bilaspur, H.P., whereunder, he directed, for, resumption, of possession of suit land measuring 2532.02 sq. meters, being hence declared to be illegal, void, contrary to the judgment and decree pronounced by the learned Additional District Judge Bilaspur, upon Civil Appeal No. 171-B/13 of 1986/85. Being aggrieved therefrom, the plaintiff/appellant herein concerts to assail, it, by preferring an appeal before this Court.

2. Briefly stated the facts of the case are that, the original plaintiff Sh. Mangat Ram, now represented by appellant, filed a suit for declaration, possession and mandatory injunction as against the defendant. It is averred that he filed a civil suit which was decided on 29. 1.1985 by the learned Sub Judge, Bilaspur and the plaintiff was held to be tenant of the suit land. In appeal, the learned Additional District Judge, Bialspur, modified the judgment and decree to the extent that the plaintiff was held to be tenant in possession, but it was held that he cannot

become owner in view of the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act. It was further alleged that the defendant can not interfere in peaceful possession of the plaintiff except by the process of law. It was alleged that the defendant issued notice to the plaintiff for resumption of the land and the plaintiff filed the reply also. The Collector vide his order dated 25.3.1997 ordered to resume the possession of the suit land and further issued warrant of possession. It was alleged that the said order is mala fide and the plaintiff cannot be evicted under the law. Hence the suit filed by the plaintiff.

3. The defendant contested the suit and filed written statement, wherein, he has taken preliminary objections inter alia maintainability, res judicata, cause of action and that the plaintiff had not alleged the complete facts in regard to an execution of application filed earlier in regard to the suit land. On merit, it was pleaded that the plaintiff was dispossessed on 29.3.1997 from the suit land in accordance with law and he is not entitled to any relief claimed.

4. On the pleadings of the parties, the learned trial Court, struck, the following issues inter-se the parties at contest:-

1. Whether the order dated 25.3.1997 passed by the District Collector, Bilaspur, is wrong, illegal, null and void, as alleged?OPP

2. Whether the plaintiff is entitled to the relief of possession of the suit land, as alleged? If so, in what manner?OPP.

3. Whether the suit is not maintainable in the present form?OPD.

4. Whether the suit is barred under Section 11 of the C.P.C.? OPD

5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.

6. Whether the plaintiff has been evicted from the suit land on 29.3.1997 in accordance with law? If so, its effect?OPD.

7. Whether this Court has no jurisdiction to decide the case, as alleged?OPD.

8. Whether the suit is bad for non-service of notice U/S 80 CPC, on the defendant, as alleged?OPD.

9. Whether the suit land has been improved by the defendant after dispossessing the plaintiff from it, as alleged? If so, its effect? OPD.

10. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court, dismissed the suit of the plaintiff/appellant herein. In an appeal, preferred therefrom by the plaintiff/appellant before the learned First Appellate Court, the latter Court dismissed the appeal and affirmed the findings recorded by the learned trial Court.

6. Now the plaintiff/appellant herein, has instituted the instant Regular Second Appeal, before this Court, wherein, he assails the findings recorded in its impugned judgment and decree, by the learned first Appellate Court. When the appeal came up for admission on 30.05.2005, this Court, admitted the appeal instituted by the plaintiff/appellant against the judgment and decree, rendered by the learned first Appellate Court, on the hereinafter extracted substantial question of law:-

1. Whether the proceedings for termination of the tenancy was to be regulated under the provisions of H.P. Tenancy and Land Reforms Act, because the learned Additional District Judge had held the plaintiff late Mangat Ram to be tenant over the land in suit, as per judgment dated 3.5.89?

Substantial question of Law No.1.

7. In sequel to a conclusive binding verdict recorded by the learned Additional District Judge, Bilaspur, upon, Civil Appeal No. 171-B/13 of 1986/85, verdict whereof borne in Ex. P-3, wherein, (i) the learned Additional District Judge concerned, made, a declaration qua the deceased plaintiff's possession, upon, the suit khasra numbers being in the capacity of a lessee, under, a lease deed executed inter se the deceased plaintiff vis-a-vis the defendant, (ii) also he in the operative part, of, Ex.P-3, injuncted the defendant/state of Himachal Pradesh, from, interfering in the possession of the plaintiff upon the suit land except by adoption of due process(es) of law, (iii) hence, thereupon, the District Collector concerned, in consonance with the apposite instrument of lease deed executed inter se the deceased plaintiff, with, the defendant/State of Himachal Pradesh, instrument of lease whereof is borne in D-2, tritely upon anvil of clause (f) thereof, provisions whereof stand extracted hereinafter, wherein, contemplations are held, of, the lessee on being served with one month's notice, his being entailed with an obligation, to vacate the leased property, hence, under EX.D-3, issued one month's notice upon the lessee. Clause (f) of the lease deed, comprised in Ex. D-2, is reproduced as under:-

"(f) The lessee shall vacate the leased premises on one month's notice requiring him to do so at any time and within that period he (lessee) will have to remove his materials or structures from the land failing which he shall be liable to ejectment without any claim for any compensation."

As apparent, from, an endorsement occurring, on the second page of Ex. D-3, it was evidently served upon the lessee, AND thereafter, the authority concerned, ordered for issuance of warrants of possession vis-a-vis the suit land. In consequence(s) to valid execution, of apposite warrants, of possession, hence, possession of, the suit land was taken, from the lessee. The extant suit, of, the plaintiff, rears, a plea for setting aside the contractual notice borne in Ex. D-3 also embodies therein relief, for, setting aside the orders recorded by the Collector concerned, orders whereof are borne in Ex., D-1.

8. Be that as it may, the learned counsel appearing for the appellant has

contended with vigour, (i) that the mandate, of, the learned Additional District Judge concerned, pronounced in Civil Appeal No. 171-B/13 of 1986/85, verdict whereof, is, comprised in Ex. P-3, voices a categorical declaration, of, the lessee being construed to be a "gair maurusi" upon the suit land, under, the defendant/State, (ii) whereafter, he contends that resumption(s) or reclamation(s) of, possession of the suit property, enjoined reverence being meted vis-a-vis the apposite provisions borne in the Himachal Pradesh Tenancy and Land Reforms Act, 1972, rather than, an inapt invocation by the Collector concerned, of the afore extracted clause, borne in the instrument of lease executed vis-a-vis the suit land inter se the lessee/deceased plaintiff and the defendant/State. However, reading(s) of the operative paragraph No.11, of, the verdict pronounced by the learned Additional District Judge, Bilaspur in Civil Appeal No. 171-B/13 of 1986/85, verdict whereof borne in Ex.P-3, paragraph No.11 whereof stand extracted hereinafter:-

"11. In view of the foregoing discussion, I conclude that the plaintiff is in possession of the suit land as a tenant under the defendant, the State of H.P.

However, it is held further that the plaintiff has not become owner of the disputed land under the provisions of H.P. Tenancy and Land Reforms Act, 1972. Consequently, the appeal is partly accepted and the judgment and decree dated 29.1.1985 passed by Shri R.K. Verma, Sub Judge, Bilaspur are modified. It is declared that the plaintiff is in possession of the disputed land as tenant under the lease dated 1.2.1965 under the defendant, the State of H.P. The defendant, the state of H.P. is restrained from interfering with the possession of the plaintiff over the disputed land except under the due process of law. Parties shall bear their own costs. The judgment and decree under appeal shall stand modified accordingly. Decree sheet be prepared accordingly."

contrarily makes a display, of, the learned Additional District Judge, Bilaspur, making, a clear echoing therein of the plaintiff not being vested with the statutory proprietary rights vis-a-vis the suit land, especially upon purported working(s), of the apposite statutory provisions vis-a-vis him, provisions whereof are embodied in the Himachal Pradesh Tenancy and Land Reforms Act, 1972. Contrarily, a vivid declaration, is, made therein of the plaintiff's possession vis-à-vis analogous suit khasra number(s) therein vis-a-vis the suit khasra numbers herein, (i) being, in the capacity of a tenant, importantly, under an instrument of lease, of, 1.2.1965, executed vis-a-vis the suit land inter se him and the State of H.P. (ii) Furthermore, when in Ex.P-3 it is also ordained, of, the defendant/State being restrained, from, interfering in the plaintiff's possession vis-a-vis the suit land, except by its adopting due process of law, (iii) thereupon, the learned Collector concerned by invoking the aforesaid apposite clause (f), borne, in the apposite instrument of lease embodied in Ex.D-2, also hence his in consonance therewith, evidently issuing, one month's notice upon the lessee, notice whereof also stood evidently served upon the latter, as borne by an endorsement existing on the second page of Ex. D-3, (iv) thereupon, the subsequent thereto

resumption, of, possession, of, the suit land, by the defendant/State of H.P., under validly executed warrants of possession, from, the lessee, cannot be, construed to be suffering from any illegality. Even if, there was any illegality, in the Collector concerned, relying upon clause (f) of Ex. D-2, thereupon, it was open for the lessee, to, adduce evidence in respect thereof, (v) especially qua the aforestated apposite clause being untenable, besides being arbitrarily invoked by the Collector concerned. However, the aforesaid evidence remains unadduced. Contrarily, the only ground reared in the plaint, for, reversing the verdict recorded by the Collector concerned, verdict whereof is borne in Ex. D-1, (vi) is of Ex. D-2, rather vesting right(s) in the lessee, for, his ejectment from the suit land, occurring only in consonance, with, the provisions borne in the H.P. Tenancy and Land Reforms Act, (vii) espousal whereof, for all the reasons recorded hereianbove, are extremely frail, thereupon, with the Collector concerned, pronouncing apposite valid orders, orders whereof is borne in Ex.D-1, hence, subsequent thereto resumption of possession, of the suit land, by the defendant/State, under validly executed warrants, of, possession, from, the lessee/plaintiff, is imbued with formidable legal tenacity.

9. The above discussion unfolds the fact that the conclusions as arrived by the learned first Appellate Court as well as by the learned trial Court, being based, upon a proper and mature appreciation of evidence on record. While rendering the findings, the learned first Appellate Court as well as the learned trial Court did not exclude germane and apposite material from consideration. Consequently, the substantial question of law No.1 is answered in favour of the defendant/respondent and against the plaintiff/appellant.

10. In view of the above discussion, there is no merit in the instant appeal, which is accordingly dismissed. The impugned judgments and decrees are maintained and affirmed. All pending applications also stand disposed of. No order as to costs. Records be sent back.