

(2010) 03 SHI CK 0219

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 335 of 1996

Satya Prakash and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 3, 3(2)

Citation : (2010) 3 ShimLC 301

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Hon"ble Surjit Singh, J.—This Regular Second Appeal against the judgments and decrees of the trial Court and the first Appellate Court, whereby the suit filed by the appellants (plaintiffs) was dismissed by the trial Court and the appeal against the decree of the trial Court was dismissed by the learned District Judge, was admitted on the following substantial questions of law, vide order dated 12th November, 1996:

1. Whether on the proper construction of the provisions of Punjab Village Common Lands (Regulation) Act, 1961 and the H.P. Village Common Land (Vesting & Utilization) Act, 1974, the land had vested in the Panchayat and later on in the Government?
2. Whether in view of the construction of houses, partition of land and transfers, also the exclusive cultivation and irrigation, the land has ceased to be the Shamlat Land?
3. Whether in view of the plaintiffs/appellants" separate and settled possession on the land and the existences of their houses, the land could not be allotted partially and the appellants were entitled to declaration and injunction claimed for?
4. Whether in view of the entries in the revenue record, Ex. P-2 Misal Haquiat for

1911-12, Ex. P-3 Jamabandi for 1921-22, Ex. P-4, Jamabandi for 1937-38, Ex. P-5, Jamabandi for 1953-54, the land could be treated as shamlat, moreso when the same had been cultivated, built upon and was in exclusive possession of the plaintiffs?

5. Whether on the material on record, it was established that the plaintiffs had become owners of the property by adverse possession being in continuous, open, hostile possession for more than 60 years, prior to the filing of the suit and the irrigated fields and houses were existing on the land?

6. Whether the findings of the learned Courts below are vitiated for non-consideration of oral and documentary evidence?

2. As a matter of fact, all the six substantial questions of law, on which the appeal was admitted, form only one substantial question of law, viz. whether the suit land is saved from vestment in the State of Himachal Pradesh, under the provisions of Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, as claimed by the plaintiffs? So, the substantial question of law involved in the present appeal is reformulated as follows:

Whether the suit land or any part of it is saved from vestment in the State of Himachal Pradesh, under any of the saving clauses of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974? If so, to what extent.

4. Factual matrix of the case, as per pleadings of the parties, may be noticed. Plaintiffs filed a suit for declaration that land measuring 1300 Kanals, as described in the plaint and the judgment of the learned trial Court, which was Shamlat land, as per Misl Hakiat for the year 1911-12 (Ex. P-2) and the subsequent Jamabandis, i.e. Jamabandi for the year 1937-38, copy Ex. P-4, Jamabandi for the year 1943-44, copy Ex. P-5 and Jamabandi for the year 1953-54, copy Ex. P-6, was in separate cultivating possession of the proprietors of the village, pursuant to a partition that had taken place long back and so it was exempted from vestment in the State of Himachal Pradesh, under the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, and prior to that in the Panchayat, under the Punjab Village Common Lands (Regulation) Act, 1961. Relief of permanent prohibitory injunction restraining the respondents (defendants) from interfering in the possession of the plaintiffs over the suit land was also sought.

5. Suit was contested by the defendants, i.e. State of Himachal Pradesh and some other private persons, to whom a portion of the suit land had been allotted, after its alleged vestment in the State. It was pleaded that the Civil Court did not have the jurisdiction to try the suit, the suit was bad for non-joinder of necessary parties, valuation of the suit had not been done properly for the purposes of Court fee and jurisdiction, plaintiffs were estopped by their act and conduct from filing the suit and they had no cause of action and locus standi to sue.

6. Trial Court framed following issues, on the pleadings of the parties:

1. Whether the plaintiffs had been in separate cultivating possession of suit land prior to 26.1.50 as alleged? OPP

2. Whether the suit land has not vested in the Gram Panchayat and in State of H.P. as alleged? OPP

3. Whether plaintiffs are entitled to the relief of permanent prohibitory injunction? OPP

4. Whether this Court has no jurisdiction to try the suit? OPD

5. Whether the suit is bad for non-joinder of necessary parties? OPD

6. Whether the suit is property valued for Court fee and jurisdiction? OPP

6(a) Whether the plaintiffs are estopped from filing the suit due to their own act and conduct? OPD

6(b) Whether the plaintiffs have no cause of action and locus-standi to file the suit? OPD

7. Relief.

7. Issues No. 1, 2 and 3 were found against the plaintiffs. Issues No. 4, 5, 6 and 6(a) were found against the defendants. However, issue No. 6(b) was found in favour of the defendants and consequently the suit was dismissed.

8. Plaintiffs went in appeal to the District Judge, who dismissed the appeal, with an observation that in case any of the plaintiffs was found in possession of any part of the suit land, he would not be dispossessed or ejected, except by due process of law. (This observation is too vague to be given effect to). Plaintiffs then filed this Regular Second Appeal, which was admitted on the aforesaid substantial questions of law.

9. I have heard the learned Counsel for the parties and perused the record.

10. Learned Counsel for the appellants confines his submissions only with respect to the effect of clause (d) of sub-section (2) of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, as incorporated vide Amending Act No. 20 of 2001. His submission is that in view of the aforesaid clause, the suit land is exempt from vestment in the State of Himachal Pradesh.

11. Since the institution of the suit and even the decision of the suit by the trial Court and the decision of the appeal by the District Judge, there has been a change in the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, by Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 2001 (Act No. 20 of 2001), whereby clause (d) has been added to sub-section (2) of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, and this amendment has been given

effect from the date of the enforcement of the Principal Act of 1974, itself.

12. Sub-section (1) of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, provides for the vestment of certain Shamlat lands in the State of Himachal Pradesh. Sub-section (2) of Section 3 of the Act provides for exemption of certain types of Shamlat land from vestment in the State. Therefore, clause (d) added to sub-section (2) of Section 3 is another category of Shamlat land, which were exempted from vestment in the State of Himachal Pradesh. Clause (d) reads as follows:

(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers so recorded before 26th January, 1950 to the extent of their shares therein.

13. A reading of the aforesaid clause shows that Shamlat land, which, as per revenue record, was being recorded in cultivating possession of the co-sharers, to the extent of their shares, prior to 26th January, 1950 and was assessed to land revenue, is saved from vestment in the State.

14. In the present case, Jamabandi for the year 1945-46 shows that out of total 1292 Kanals 14 Marias land, 224 Kanals 9 Marias land entered against Khatauni Nos. 135 to 180 was in cultivating possession of various co-sharers, whose names find mention against the aforesaid Khataunis and the same was also assessed to land revenue. Therefore, this land, to the extent it was within the proportionate limit of the co-sharers, who are shown to be in cultivating possession, was exempt from vestment in the State of Himachal Pradesh, in view of clause (d) of sub-section (2) of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, as incorporated by Amending Act No. 20 of 2001.

15 In view of the abovestated position, it is held that land measuring 224 Kanals 9 Marias, which was recorded in the cultivating possession of the co-sharers against Khatauni Nos. 135 to 180, in the Jamabandi for the year 1945-46 (Ex. P-5), to the extent it was within the limits of their shares in the Shamlat land, did not vest in the State of Himachal Pradesh, under the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974. Substantial question of law, reformulated hereinabove, is answered accordingly.

16. As a result of the above discussion and finding on the reformulated, substantial question of law, appeal is partly accepted and the suit of the plaintiffs is partly decreed, and a decree declaring that out of the total suit land, area measuring 224 Kanals 9 Marias, which was in possession of the co-sharers, to the extent it was within the limits of their shares in the Shamlat land, did not vest in the State of Himachal Pradesh, under the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974, and the plaintiffs are declared to be the owners of the said land. By way of further relief, respondents-defendants are restrained from interfering with the possession of the plaintiffs on

the said 224 Kanals 9 Marias land.

Appeal stands disposed of accordingly.