

(2016) 10 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : RSA No. 212 of 2001 a/w C.O. No. 370 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Brijbala

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2016) LatestHLJ(HP) 1559

Hon'ble Judges : Mr. Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate, for the Respondent No. 1(b); Already ex parte, for the Respondents No. 2(a), 2(b) and 3; Mr. D.S. Nainta and Mr. Virender Verma, Addl. AGs, for the Appellant

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J. - This appeal having been directed against the judgment and decree dated 18.7.2000 passed by learned District Judge, Kinnaur at Rampur Bushahr, H.P. in Civil Appeal No. 09 of 2000 has been admitted on the following substantial questions of law:

1) Whether in the facts and circumstances of the case, particularly when the suit land had been declared surplus and had vested in the State free from all encumbrances, the suit of the plaintiff could be decreed?

2) Whether the Civil Court has no jurisdiction in view of the bar created under H.P. Ceiling Act, 1971?

2. The subject matter of dispute in the present lis is the land entered in Kh. Nos. 1266, 1267, 1268 and 1269, kita 4 measuring 1-41-43 hectares and land entered in Khata Khatoni No. 7 min/11 min Kh. No. 523 min measuring 0-0 situate in Mauza Gopalpur, Pargana Sarahan, Tehsil Rampur Bushahr, District Shimla, H.P. The previous owners of the suit land were Kanwar Sagar Singh (defendant No. 2), Gopal Singh and Raj Pal Singh, sons of late Kanwar Jagjeet

Singh. The nature of the land in the Jamabandi was recorded as Banjar kadim and un-measured. The defendant No. 2 has gifted his 3rd share in the suit land in favour of his wife Smt. Manjeet Sagar (defendant No. 3). Mutation No. 7638 was sanctioned and attested in her favour on 15.6.1966. She, therefore, came to be in possession of 3rd share of her husband defendant No. 2 in the suit land. Out of the suit land, she had sold area measuring 14-19 bighas (hereinafter referred to as the suit land) denoted by Kh. No. 523/1 in a sum of Rs. 3,000/- to the plaintiff. Rapat qua the said sale was entered in Rojnamcha with halqua Patwari Gopalpur Patwar Circle on 4.7.1966. Consequently, mutation No. 7640 came to be attested qua the land purchased by the plaintiff on 30.7.1967. This land came to be denoted by new Kh. No. 1011/523/1 and the possession thereof was given to the plaintiff. The plaintiff came to be recorded as owner-in-possession of the suit land in the Jamabandi for the year 1967-68. He made the same cultivable and raised an apple orchard thereon. A house was also constructed over the suit land. His possession was neither questioned nor disturbed by the co-owners or anybody else in the area. The Assistant Collector 2nd Grade, Rampur Bushahr allegedly reviewed mutation No. 7640 whereby the plaintiff was recorded as owner of the suit land vide mutation No. 7763 dated 8.6.1972, on the basis of order dated 25.3.1969 passed by the Collector, Rampur Bushahr. According to the plaintiff, no such order is in existence and as such mutation No. 7763 is illegal and contrary to the provisions of law. Therefore, declaration to the effect that the plaintiff is owner-in-possession of the suit land and that the review mutation No. 7763 attested by Assistant Collector 2nd Grade Rampur is illegal and void hence not legally admissible was sought by filing the suit in the trial Court.

3. The suit has been contested and resisted by the appellant (hereinafter referred to as defendant No. 1) on the grounds inter alia that defendant No. 2 though had gifted his 3rd share in the land in question to his wife defendant No. 3, however, without putting her in possession thereof. She as such, was neither in possession nor owner of the suit land and as such could have not transferred the suit land by way of sale to the plaintiff. The Collector, Rampur Bushahr vide order dated 25.3.1969 had directed the Assistant Collector to review the mutation of the suit land attested in favour of the plaintiff. The suit land bearing Kh. No. 523 min was allotted to defendant No. 3 in partition. She later on declared the same surplus in her return filed in the H.P. Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act in short). The review mutation is stated to be correct. There was no need to associate the plaintiff at the time of its attestation because he allegedly was neither owner nor in possession of the suit land.

4. Defendants No. 2 & 3 in their written statement have, however, admitted the claim of the plaintiff as set out in the plaint, being correct.

5. Replication was also filed to the written statement of defendant No. 1.

6. On the pleadings of the parties, learned trial Court has framed the following

issues:

1. Whether the plaintiff is owner in possession of the suit land? OPP.
2. Whether the order of review of mutation dated 25.3.1969 is void, as alleged? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has got no cause of action against the defendant No. 1? OPD.
5. Whether this court has no jurisdiction to try the present suit? OPD.
6. Whether the suit is bad for non-compliance of the mandatory provisions of section 80 CPC, as alleged? OPD.
7. Whether the suit is barred by limitation? OPD.
8. Relief.

7. Learned trial Court on appreciation of the oral as well as documentary evidence has declared the plaintiff as owner-in-possession of the suit land and decreed the suit accordingly. Learned lower Appellate Court in modification of the judgment and decree passed by the trial Court has, however, decreed the suit only qua the land measuring 14-19 bighas, instead of the entire suit land measuring 1-41-43 hectares. The legality and validity of the judgment and decree passed by the learned lower appellate Court has been questioned by the defendant-State on several grounds, however, mainly that the suit could have not been decreed as defendant No. 3 had herself declared the suit land surplus on coming into operation the Act of 1972. The order passed by the Collector, Rampur Bushahr as such was final and the same could have not been assailed further in the Civil Court. The order qua vestment of the suit land in favour of the State passed by the Collector has attained the finality and as such cannot be assailed further in the Court. The defendant No. 3 though may have sold the suit land to the plaintiff, however, since the mutation vide which she had sold the same was later on reviewed, therefore, the suit has been sought to be dismissed.

8. In the Cross-Objections, the respondent-plaintiff has assailed that part of the impugned judgment and decree whereby learned lower Appellate Court in modification of the judgment and decree passed by the trial Court has decreed the suit only to the extent that the plaintiff is owner-in-possession of the suit land measuring 14-19 bighas bearing Kh. No. 1011/523 (old) instead of 1-41-43 hectares on the grounds inter alia that once the sale in his favour qua land bearing Kh. Nos. 1266, 1267, 1268 and 1269 has been held legal and valid, he should have been held to be owner-in-possession of the entire suit land i.e. 1-41-43 hectares and the area could have not been reduced to 1-12-49 hectares. According to him, whatsoever area was in his possession, he should have been declared owner in possession thereof.

9. It is seen that the Cross-Objections, preferred by the respondent-plaintiff, have not yet been admitted. I hereby admit the same on the following substantial question of law:

"1. Whether learned lower Appellate Court has wrongly modified the impugned judgment and decree passed by the trial Court declaring thereby the plaintiff-objector owner-in-possession of the suit land to the extent of only 14-19 bighas in ignorance of the evidence available on record ?

10. Now, if coming to substantial question of law No. 1, the question of declaring the suit land surplus under the Act, would have arisen, had on the appointed day i.e. 24th day of January, 1971, defendant No. 3 been the owner-in-possession thereof. Admittedly, defendant No. 3 became owner-in-possession of the land bearing Kh. No. 523 (old) to the extent of ? share after her husband defendant No. 2 gifted away the same to her by way of oral gift. Mutation No. 7638 (Ext. PB) came to be sanctioned and attested on the basis of the oral gift in her favour on 15.6.1966. Consequently, her name came to be reflected as owner of the suit land i.e. 14-19 bighas under Kh. No. 1011/523 in the Jamabandi for the year 1967-68. It is the plaintiff Rameshwar Dayal, who has been shown in possession of the land in question by virtue of having acquired the same vide mutation No. 7640 (Ext. PC), attested on 30.9.1966. It is seen that Tatima of the suit land measuring 14-19 bighas denoted by Kh. No. 1011/523/1 (new) was also prepared and reflected in the order of mutation (Ext. PC). Meaning thereby that well before the appointed day i.e. 24th day of January, 1971, defendant No. 3 had relinquished the right, title and interest in the suit land and it is the plaintiff who has purchased the same from her and became owner-in-possession thereof. Not only this, but as per his own testimony and that of PW-2 Satish Bansal, he had raised an apple orchard thereon and also raised the construction of a house. Therefore, well before coming into force of the Act, the plaintiff had become owner of the suit land. It being so, though, there was no occasion to the Collector, Rampur Bushahr to have passed order dated 25.3.1969 to review mutation No. 7640 attested in favour of plaintiff that too without affording him an opportunity of being heard. Anyhow, the defendant-State has failed to produce any such order during the course of trial, therefore, it would not be improper to conclude that the review petition being without any basis is highly illegal as well as violative of the principles of natural justice.

11. The opportunities to produce the record pertaining to the order dated 25.3.1969 even were granted by this Court also during the course of hearing as is apparent from the following order passed on 8.12.2015:

"Heard further.

The record pertaining to the order dated 25.3.1969, whereby the Collector, Rampur has allegedly ordered to review Mutation No. 7640 Ext. PC qua the suit land sanctioned and attested in favour of respondent No. 1-plaintiff Rameshwar Dayal (since dead), be produced by the appellant-State 22.2.2016. The entire

record of Review Mutation No. 7763, Ext. PD be also produced on the same day."

12. However, learned Addl. Advocate General has failed to produce the same irrespective of seven opportunities granted for the purpose. Ultimately, when the appeal came to be listed before this Court on 13.7.2016, learned Addl. Advocate General had expressed his inability to produce the record as according to him, the same was not available. The order passed on that date reads as follows:

"Learned Addl. Advocate General submits that the record pertaining to order dated 25.3.1969 whereby the Collector has reviewed mutation No. 7640 (Ext. PC) and that of review mutation No. 7763 (Ext. PD) could not be traced out, hence not available. List on 18.7.2016 for hearing."

13. Therefore, when the defendant-State has miserably failed to produce the order dated 25.3.1969, the review of mutation No. 7640 dated 30.9.1966 vide review mutation No. 7763 dated 24.12.1969 Ext. PD is neither legally nor factually sustainable and is rather in violation of the principles of natural justice because the plaintiff who after having acquired the suit land from defendant No. 3 and recorded as owner-in-possession thereof, the mutation Ext. PC sanctioned and attested in his favour, the suit land could have not been reverted back to defendant No. 3. Above all, she had also no occasion to declare the same as surplus on coming into force the Act. The statement Ext. DE qua the suit land bearing Kh. No. 1011/523 measuring 14-19 bighas is neither legally nor factually sustainable. The suit land could have also not been mutated in favour of defendant No. 1-State as defendant No. 3 after the transfer of the same to the plaintiff was not competent to have declared the same surplus.

14. True it is that the land bearing Kh. No. 523 was joint of defendant No. 2 and his two brothers to the extent of ? share each. As per the evidence available on record, this area was 100 bighas. The defendant No. 3 has sold only a portion of the land in her possession i.e. 14-19 bighas denoted by Kh. No. 1011/523 out of her ?rd share and the order of mutation Ext. PC contains Tatima of the land so sold by her to the plaintiff coupled with the fact that the other co-sharers never objected to the sale of a specific portion out of the joint land by defendant No. 3. Thus, the plaintiff has rightly been held to be owner-in-possession of the land measuring 14-19 bighas. It being so, substantial question of law at Sr. No. 1 does not at all arise for determination in this appeal.

15. Now, if coming to substantial question of law at Sr. No. 2, no doubt under Section 25 of the Act, no suit or other legal proceedings shall lie against the State Government for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of any provisions contained in the Act or any Rules framed thereunder. However, in the case in hand, as already held in para (supra) since the suit land was purchased by the plaintiff well before coming into force the Act, therefore, neither the provisions contained thereunder nor the Rules are applicable in the case in hand. The plaintiff on the other hand had become owner-in-possession of the suit land well before coming into force the

Act. Therefore, there is no question of the jurisdiction of Civil Court being barred in the case in hand. Otherwise also, the review mutation Ext. PD being without any authority and order, having been passed behind the back of the plaintiff, is neither legally nor factually sustainable and rather violative of the principles of natural justice. On this score also, it cannot be said that the jurisdiction of the Civil Court to try and entertain the suit cannot be said to be barred. The substantial question of law at Sr. No. 2 also does not arise in the case in hand for determination.

16. Now if coming to the substantial question of law framed (supra) for adjudication in the Cross Objections preferred by the respondent-plaintiff, the same also does not at all arise for determination for the reason that as per the own case of the plaintiff, he has purchased only a portion of the land bearing Kh. No. 523 (old) measuring 14-19 bighas out of 3rd share of defendant No. 3 therein. He is entitled to be declared as owner-in-possession of only this much land which he had purchased from defendant No. 3 and not beyond that. True it is that the sale has been held legal and valid, however, only qua the suit land measuring 14-19 bighas and not beyond that. Therefore, that part of the impugned judgment and decree whereby learned lower Appellate Court has decreed the suit only qua suit land measuring 14-19 bighas in modification of the judgment and decree passed by the trial Court is absolutely legal and valid, hence does not call for any interference by this Court.

17. In view of what has been stated herein above, there is no force in this appeal and Cross-Objections. The same are accordingly dismissed. The judgment and decree passed by learned lower Appellate Court is hereby ordered to be affirmed. There shall, however, be no orders as to costs. The appeal and Cross-Objections, both are accordingly disposed of.