
(2014) 03 SHI CK 0075
In the High Court Of Himachal Pradesh
Case No : RSA No. 450 of 2001-F

State of Himachal Pradesh

APPELLANT

Vs

Kamla Devi and Others

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 03 SHI CK 0075

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : R.P. Singh, Assistant Advocate General, Advocates for the Appellant;
Dushyant Dadwal, Advocates for the Respondent

Judgement

Dharam Chand Chaudhary, J.—This appeal having arisen from the judgment and decree dated 25.5.2001 passed by learned Additional District Judge (I), Kangra at Dharamshala in Civil Appeal No. 72-P of 2000, has been admitted on the following substantial questions of law:-

1. Whether the civil courts has jurisdiction to entertain the suit where specific bar has been created under Section 10 of the H.P. Village & Common Land Vesting and Utilization Act, 1974? If so, its effect?

2. Whether the allotment of land in dispute in favour of the plaintiff is result of fraud and misrepresentation?

2. In a nutshell, deceased respondent, Uttam Chand, plaintiff in the trial Court, was allotted the land entered in Khata No. 217 min, Khatauni No. 599 min, Khasra Nos. 1733/1724 and 1722/1495, situated in Mohal Rodi, Mauza Khalet, Tehsil Palampur, District Kangra (hereinafter referred to as "the suit land" for convenience sake), in the year 1981 under the Scheme, namely, The Himachal Pradesh Village Common Lands Vesting and Utilization Scheme, 1975, hereinafter referred to as "the Scheme" in short. Even well before its allotment to the plaintiff, he had raised the construction of one-room house thereon. After allotment, he raised further construction thereon in the year 1981. He continued

to be in peaceful possession thereof till 1992. It is vide order 26th May, 1993 (Ex.P-2), the Additional District Magistrate, Kangra at Dharamshala while exercising the powers of Commissioner under the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974 (hereinafter referred to as "the Act" in short) cancelled the allotment of the suit land. This has led in institution of civil suit No. 418 of 1993 in the Court of Senior Sub Judge, Kangra at Dharamshala. The same after holding full trial was decreed vide judgment and decree dated 15.1.2000. The said judgment and decree was assailed further by way of an appeal in the Court of learned Additional District Judge (I), Kangra at Dharamshala. The same, however, was affirmed and the appeal dismissed.

3. The challenge to the impugned judgment and decree in the present appeal is on the grounds, inter alia, that the findings qua plaintiff was eligible as per the Scheme for allotment of the suit land recorded by both courts below are not legally and factually sustainable because the plaintiff was not eligible being not a landless person on account of owner in possession of land measuring 0-00-77 Hectares situated in Mohal Sain-Da-Lahar, Mauza Thural and his income from pension more than Rs. 3,000/- per annum. He, therefore, obtained the grant of suit land by way of misrepresentation and fraud and, as such, grant was rightly cancelled. The findings that the grant could have only been cancelled within a period of less than one year are also stated to be contrary to the provisions under the Act. The question of the jurisdiction of civil courts barred under the provisions of Section 10 of the Act has not at all been considered.

4. Since both the questions are interlinked and inter-connected, the same are taken up together for determination to avoid repetition of discussion and evidence.

5. On hearing Mr. R.P. Singh, learned Assistant Advocate General on behalf of the appellant-defendant and Mr. Dushyant Dadwal, Advocate learned counsel for respondents No. 1(a) to 1(c) and going through the record, in my considered opinion, no legal question much less the substantial questions of law arises for determination in the present appeal because both courts below have not committed any illegality or irregularity while decreeing the suit and declaring thereby the order dated 26th May, 1993 (Ex.P-2) illegal, null and void and also restraining the appellant-defendant from causing any interference in the suit land. The findings so recorded are supported not only by the evidence available on record, but legally also for the reason that under clause 5(3)(a) of the Scheme, a person who owns or holds land less than one acre and is a member of Scheduled Castes/Scheduled Tribes, Ex-servicemen, freedom fighter and Ex-INA Personnel, covered under the Government of India scheme and also those freedom fighters who have been awarded commendation certificates by the State Government, is eligible for allotment of the land. Deceased plaintiff Uttam Chand admittedly was an Ex-serviceman. The evidence available on record reveals that he alongwith his other brothers was owner-in-possession of land measuring 9 kanals in Tika Bhranta. Besides this, he was owner-in-possession of the land

measuring 0-00-77 Hectares situated in Mohal Sain-Da-Lahar, Mauza Thural. However, the land he was having alongwith his brothers at the time of allotment of the suit land, was less than one acre. He thus was eligible for the grant of suit land. The simple plea of fraud and misrepresentation raised by the defendant-State in its defence without there being any proof cannot be believed to be true nor can it be said that the plaintiff had obtained the grant by way of misrepresentation and playing fraud. As a matter of fact, in order to raise such plea, the misrepresentation and fraud need to be pleaded and proved. The plaintiff being an Ex-serviceman, having less than one acre of land was duly eligible for the grant of suit land. Not only this, it is proved from his own statement and that of PWs-2 and 3 that he had no house and it is well before the grant of the suit land in his favour, he had constructed a two-roomed house thereon. PW-3, however, tells us that the house so constructed was consisting of only one room. It has also come in their statements that the deceased plaintiff started residing in the house he constructed over the suit land. Therefore, the plaintiff having no house to reside had raised the construction of a small house well before the allotment of the land in question. Therefore, the allotment of the suit land to the plaintiff cannot be said to be the result of fraud and misrepresentation, as alleged.

6. If coming to substantial question No. 1, nothing except for the provisions contained under Section 10 of the Act is brought to the notice of this Court during the course of arguments as to how in a matter of this nature when the grant of land is cancelled after 13 years of its allotment, the Civil Court has no jurisdiction to entertain and try the suit.

7. If coming to the judgment and decree under challenge in the appeal, this point though has been raised in the memorandum of appeal, however, never agitated as the perusal of the impugned judgment and decree reveals.

8. True it is that the order made by the Collector of the State Government or any authorized officer cannot be questioned in any court or before any officer or authority as provided under Section 10 of the Act, however, what this Court could gather from the perusal of the pleadings of the parties and the evidence available on record and also the provisions contained under the Act is that the Commissioner under the Act while cancelling the allotment of the suit land vide order Ex.P-2 has not acted in conformity with the Fundamental Principles of Judicial Procedure and to the contrary over-looked the provisions contained under the Act and also the law. Therefore, in such a situation, the Civil Court definitely has jurisdiction to entertain and try the suit. The contentions to the contrary are, therefore, not legally sustainable.

9. Both the substantial questions are answered accordingly.

10. For all the reasons hereinabove, this appeal fails and the same is accordingly dismissed. Pending applications, if any, shall also stand disposed of.