
(2010) 05 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 381 of 2000

State of Himachal Pradesh

APPELLANT

Vs

Karma and Others

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2010) 05 SHI CK 0014

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The State has come in appeal against judgment, decree dated 8.4.1999 passed by the learned District Judge, Bilaspur in Civil Appeal No. 10 of 1992 affirming judgment, decree dated 26.2.1991 passed by the learned Sub Judge, Bilaspur in C. Case No. 5/1 of 1990.

2. The facts, in brief, are that Respondent No. 1 had filed a suit for declaration against Appellant and one Anant Ram predecessor-in-interest of proforma Respondents alleging therein that he is resident of village Bahal and is owner in possession of the land comprised in Khasra Nos. 1950/1 and 1959/1 old and new Khasra Nos. 381 and 404, Khewat No. 133 min Khatauni No. 152 min measuring 4.15 bighas situated in village Bahal, Pargana Fatehpur, Tehsil Sadar, District Bilaspur. The Tehsildar Sadar had granted him this land vide order dated 17.3.1981 under the landless scheme. Anant Ram had no right, title or interest over the suit land, he filed an appeal before Deputy Commissioner, Bilaspur for cancellation of grant. The Deputy Commissioner wrongly, illegally set-aside the grant vide order dated 11.4.1989. The order of the Deputy Commissioner was affirmed in revision by the Commissioner on 1.8.1989. It has been alleged that Respondent No. 1 was landless and eligible for the grant under the Himachal Pradesh Grant of Nautor Land to Landless Persons, Other Eligible Persons Scheme 1975 (for short ?Scheme?). On these averments the Respondent No. 1

had filed the suit for declaration that he is owner in possession of the suit land. The order dated 11.4.1989 of Deputy Commissioner, order dated 1.8.1989 of the Commissioner are illegal. A prayer for permanent prohibitory injunction was also made. In alternative, the possession of suit land was prayed in case the Respondent No. 1 is dispossessed during the pendency of the suit.

3. The suit was contested by Appellant and by Anant Ram. Preliminary objections of locus-standi, limitation, lack of cause of action, jurisdiction, notice u/s 80 CPC and non-joinder of necessary parties were taken. It has been alleged that civil court has no jurisdiction. The Respondent No. 1 is estopped from filing the suit. The suit land is being used as ?Bartan? by the inhabitants of the village Bahal who were necessary parties. The order of Deputy Commissioner and Commissioner are legal. The Respondent No. 1 is a resident of Punjab and has played fraud with the Government. Anant Ram prayed for dismissal of the suit with compensatory costs. In replication the Respondent No. 1 reiterated the stand taken by him in the plaint and denied the case put forward by the Appellant and Anant Ram.

4. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is owner in possession of the suit land? OPP
2. Whether the order of D.C. Bilaspur dated 11.4.1989 confirmed in appeal by Divisional Commissioner, Mandi on 1.8.1989 is illegal, wrong and without jurisdiction?
3. Whether the plaintiff was entitled and eligible for the grant as alleged?OPP
4. Whether the plaintiff has no locus standi to file the suit? OPD
5. Whether the plaintiff has no cause of action? OPD
6. Whether the suit is barred by limitation? OPD
7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
8. Whether this Court has no jurisdiction to entertain the suit? OPD.
9. Relief.

5. The issues No. 1, 2, 3 were answered in affirmative and issues No. 4 to 8 in negative and the suit was decreed by the learned Sub Judge on 26.2.1991. In appeal the learned District Judge on 8.4.1999 affirmed the judgment, decree dated 26.2.1991 of the trial Court. In these circumstances, the State has come in second appeal which has been admitted on the following substantial questions of law:

1. In the absence of material and cogent evidence on record, whether a decree for declaration and injunction can be passed as in the instant case?

2. Whether a decree for declaration and injunction can be granted particularly when the plaintiff does not fall in the definition of landless persons?

6. I have heard the learned Counsel for the parties and have also gone through the record. It has been submitted on behalf of the Appellant that Respondent No. 1 does not fall in the definition of landless person and, therefore, the decree for declaration and injunction cannot be granted in his favour. It has been submitted that the Deputy Commissioner on 11.4.1989 has rightly cancelled the allotment of land which was wrongly made by Tehsildar in favour of Respondent No. 1 on 17.3.1981. The learned Counsel for Respondent No. 1 has supported the impugned judgment, decree.

7. The substantial questions of law No. 1 and 2 can be conveniently disposed of collectively, therefore, both the substantial questions of law are taken up for disposal together. The land measuring 4 bighas 15 biswas was allotted to Respondent No. 1 vide order dated 17.3.1989 Ex.PD of Tehsildar, Bilaspur. Anant Ram filed Revision dated 22.8.1986 Ex.PF before the Deputy Commissioner against order dated 17.3.1981. The Deputy programme under landless/houseless scheme. He was not eligible under the houseless/landless scheme.

8. The landless person has been defined in Clause 2(a) of the scheme which provides landless person means a person who holding no land for agricultural purposes, whether as an owner or a tenant, earns his livelihood principally on manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally. The Deputy Commissioner in the order dated 11.4. 1989 has not recorded a finding that Respondent No. 1 was not a landless person under the scheme on 17.3.1981 when land was allotted to Respondent No. 1 by Tehsildar. The Deputy Commissioner has concluded that Respondent No. 1 was not eligible under the houseless/landless scheme. The precise question involved before the Deputy Commissioner was whether Respondent No. 1 was a landless person under the scheme or not. But without recording the essential finding that Respondent No. 1 was a landless person or not under the scheme, the Deputy Commissioner has just concluded that Respondent No. 1 was not eligible under the houseless/landless scheme. The conclusion of Deputy Commissioner is not based upon finding that Respondent No. 1 was not landless person, which should have been in the order itself. The conclusion cannot be without a finding. The Deputy Commissioner has not even referred the scheme in the order. He has referred houseless/landless scheme.

9. The Commissioner has dismissed the appeal against the order dated 11.4.1989 vide order dated 1.8.1989 Ex.PG only on the ground that he has no jurisdiction to hear the case on merits and entertain the appeal. In other words, the Commissioner has not decided the appeal on merits. The order dated 11.4.1989 of the Deputy Commissioner is not in accordance with the scheme as noticed above and therefore not sustainable. The two Courts below have rightly appreciated the material on record. There is no perversity in the impugned judgment. There is no merit in the appeal. The substantial questions of law No. 1

and 2 are decided against the Appellant.

10. No other point was urged.

11. The result of the above discussion, the appeal fails and is accordingly dismissed with no order as to costs.