
(2009) 08 SHI CK 0013
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Tai Ram

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 12

Citation : (2009) 2 ShimLC 434

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—This Regular Second Appeal has been directed against the judgment and decree dated 15.10.1998 passed by the learned District Judge, Kinnaur Civil Division at Rampur Bushahar in civil appeal No. 6 of 1998.

2. Brief facts necessary for the adjudication of this Regular Second Appeal are that the respondent-plaintiff (hereinafter referred to as the plaintiff for convenience sake) filed a suit for declaration to the effect that he as well as other co-sharers are owners in possession of the land measuring 0-25-25 hectares comprised in Khata No. 88, Khatauni No. 273 and Khasra No. 353 situated in Chak Gasoh, Tehsil Rampur, District Shimla as the same is no more redeemable. The case set up by the plaintiff is that the suit land earlier comprised in Khasra Nos. 61 and 62 measuring 3-8 bighas shown in the jamabandi for the year 1973-74 was recorded in the ownership of Devta Sahib of Gasoh and that the plaintiff and other co-sharers were recorded as the mortgagee and the plaintiff is shown in the cultivatory possession over the suit land and as per the entry made in the Missal Haquiat, the appellant-defendant (hereinafter referred to as "the defendant" for convenience sake) has been recorded owner of the suit land in place of Devta and rest of the entries remained as before. According to the plaintiff, the suit land was mortgaged with possession by the Devta for Rs. 19/- in favour of Chagtu, Dharmu and Kala sons of Maju vide mutation No. 5515, which was attested on 14.3.2001 (Bikrami). The suit land is shown in possession

of the mortgagee since the attestation of said mutation order. By virtue of family partition, the suit land fell in the share of the plaintiff and as such he is in possession of the same. After passing of the Big Landed Estate and Land Reforms Act, 1972, the suit land vested in the defendant-State. Sh. Kala son of Maju died leaving behind the plaintiff as his legal heir. The plaintiff made a representation to get the mutation attested in his favour and other mortgagees. Since the period of getting the land redeemed had lapsed, the land was not redeemed though it was mortgaged more than 50 years ago. He was informed by the Additional Deputy Commissioner, Shimla vide letter dated 25.6.1993 that though the mortgagees are in possession of the suit land for the last 48 years, rights could not be conferred upon the mortgagees and suggested that civil suit be filed for claiming the relief. The defendant contested the suit. It has been asserted that the suit land was mortgaged with Nanti, Mushu and Kesru sons of Mandru and subsequently on 15.3.2001 (Bikrami), said mortgagees further mortgaged the suit land to Changtru etc. vide mutation No. 5516. It was, inter alia, contended by the defendant that the Devta could not alienate the land by way of sale, gift, Will or mortgage and as such the mutation of mortgage was null and void. According to the defendant, the suit land vested in the State of Himachal Pradesh by virtue of the provisions contained in the Himachal Pradesh Ceiling on Land Holdings Act, 1972 as the suit land was declared surplus by Gopi Nand Negi, Mohatmim of Devta Sahib Kajal (Gasoh). It is further averred by the defendant that as per the inquiry conducted by the revenue field staff on the spot, the suit land was found in possession of Devta Sahib and not in the possession of the mortgagees at that time. The learned Sub-Judge 1st Class, Rampur Bushahar dismissed the suit on 17.11.1997. The plaintiff preferred an appeal before the learned District Judge, Kinnaur. The same was allowed by the learned District Judge on 15.10.1998. The judgment and decree passed by the learned trial Court was set aside. The suit of the plaintiff for declaration, as prayed for, was decreed with costs. This Regular Second Appeal was admitted on the following substantial questions of law:

1. Whether a party can go out of its specific admission, particularly in the present case, as the vestment of land in the State of H.P. has been duly admitted by the plaintiff?
2. Whether the material adduced contrary to the pleadings or in the absence of pleadings can be read in evidence?
3. Whether a Deity is a perpetual minor and if yes, whether any charge created on its property is binding?
4. Whether the provisions of Section 73 Sub-section (2) of Transfer of Property Act are attracted in the present case, if yes then its effect?
5. Whether the present suit is within limitation, if not then its effect?

3. Mr. R.K. Sharma, learned Additional Advocate General has confined his submission only to substantial question No. 1 at the time of hearing. He has

supported the judgment and decree passed by the learned trial Court. According to him, the judgment and decree passed by the learned District Judge are not sustainable in the eyes of law. He lastly contended that the suit land vested in the State of Himachal Pradesh free from all encumbrances in view of Section 11 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972.

4. Mr. Romesh Verma, Advocate has supported the judgment and decree passed by the learned District Judge, Kinnaur.

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

6. The plaintiff has appeared in the witness box as PW-1. He has deposed that the suit land was owned by Devta Kajal Gasoh and it was mortgaged with possession with his uncle and father for Rs. 19/- on 14.3.2001 (Bikrami). He has further deposed that the suit land vested in the State under the Himachal Pradesh Ceiling on Land Holdings Act, 1972. He has also deposed that the suit land was never got redeemed by the defendant. He has proved the mutation Ex. PW-1/D, Missal Haquiat Ex. PW-1/E, jamabandi for the year 1973-74 Ex. PW-1/F, jamabandi for the year 1968-69 Ex. PW-1/C, jamabandi for the year 1964-65 Ex. PW-1/H and jamabandi for the year 1956-57 Ex. PW-1/J. PW-2 Tula Ram has deposed about the possession of the plaintiff over the suit land for the last forty years.

7. The suit land was owned by Devta Kajal Gasoh. A bare perusal of Ex. PW-1/J i.e. jamabandi for the year 1956-57 reveals that Mandir Devta Sahib Kajal Gasoh is recorded as owner of the suit land. Changtru, Kala and Dharmu were recorded in possession of the suit land as mortgagees. These entries were recorded in jamabandi for the year 1964-65 and 1968-69 Ex. PW-1/H and PW-1/C, respectively. The plaintiff has averred in para 3 of the plaint that the suit land vested in the State of Himachal Pradesh after passing of the Big Landed Estate and Land Reforms Act, 1972. While appearing as PW-1, he has testified on oath that the suit land vested in the State of Himachal Pradesh in the year 1975 under the Himachal Pradesh Ceiling on Land Holdings Act, 1972. The State of Himachal Pradesh has been recorded as owner of the suit land in Missal Haquiat Ex. PW-1/E. The defendant has brought on record mutation No. 5516 as Ex. D-1 and also mutation No. 7222 Ex. D-3. These documents show that the suit land along with other land vested in the State under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 and mutation of ownership was sanctioned in favour of the State of Himachal Pradesh.

8. Mr. R.K. Sharma has strenuously argued that the suit land vested in the State of Himachal Pradesh by virtue of Section 11 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 free from all encumbrances. According to him, the suit land was declared surplus by Gopi Nand Negi, Mohatmim of Devta Sahib Kajal (Gasoh) and that form C-II was submitted by him. He has laid great emphasis on words "free from all encumbrances". However, according to Mr. Romesh Verma,

the possession of the land was not taken over as per Section 12 and in these circumstances according to him, the land never vested in the State of Himachal Pradesh.

9. The word "encumbrance" has been explained by their Lordships of the Hon^{ble} Supreme Court in *State of Himachal Pradesh Vs. Tarsem Singh and Others*, as contained in Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1973. Their Lordships have held that when the legislature has used the expression "free from encumbrances", it means the vesting of land in the State is without any burden or charge on the land including that of easementary right. Their Lordships have held as under:

7. In the aforesaid two cases, Entry 21 of List II of Seventh Schedule of Government of India Act and Entry 18 of List II of the Seventh Schedule of Constitution of India were relied upon for the purpose of holding that there was a legislative competence while enacting the land acts. The question whether vesting of all interests and rights in the land free from all encumbrances would also include easementary right was not the subject-matter of decisions and, therefore, said decisions have no application in the present case. Section 3 of the Act provides that, notwithstanding any custom, usage, instrument agreement or decree of the Court all titles, interests and rights in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. Learned Counsel when argued that easementary right being over the land has not vested in the State omitted to consider the significance of the expression "free from encumbrances." The word "encumbrance" means a burden or charge upon property or claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. In *Abdul Karim Khan and Others Vs. Managing Committee, George High School*, it was held that encumbrance would include easementary right of drainage over the land. In *Rashid Allidina Vs. Jiwandas Khemji and Another*, it was laid down that the word "encumbrance" has always been understood to include easementary right. In *Ganga Vishnu Swaika Vs. Machine Manufacturing Co. Ltd. and Another*, it was ruled that an easementary right to discharge water on other's land comes within the meaning of encumbrance on the right in the land.

8. In the aforesaid decision, it was laid down that the right of easement on land is an encumbrance on the land and once the land vests in the State free from all encumbrances, the easementary right pertaining to that land shall also vest in the State. In *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, this Court while interpreting the words "vest absolutely in the Government free from all encumbrances" occurring in Section 16 of the *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*,

On the other hand. Sections 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain

events, shall "vest absolutely in the Government free from all encumbrances." In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession.

Thus where the land vests absolutely free from all encumbrances not only the rights in the land vest in the State but possession of the land also.

9. In the present case, Section 3 of the Act starts with an non obstante clause. Notwithstanding contained in any law, agreement, instrument, custom or usage or any decree of the Court, all rights, title and interests in the land shall stand extinguished and all such rights, title and interest shall vest in the State free from all encumbrances. If we accept the argument of learned Counsel for the respondents that easementary right being over the land and the same has not vested in the State u/s 3 of the Act, the result would be that the land would carry burden or charge affecting possession, interests and rights in the land. Such a meaning cannot be given to the expression "free from encumbrances." When the legislature has used the expression "free from encumbrances," it means the vesting of land in the State is without any burden or charge on the land, including that of easementary right. We are, therefore, of the view that the consequence of vesting of right in the land free from all encumbrances is that the interest, right and title to the land including the easementary right stood extinguished and such rights vested in the State free from all encumbrances.

10. Admittedly, the suit land was owned by Devta Sahib Kajal (Gasoh). The land was declared surplus by Gopi Nand Negi, Mohatmim in the prescribed manner. The plaintiff has admitted in the plaint that the land vested in the State of Himachal Pradesh. While appearing as PW-1, he has deposed that the land vested in the State in the year 1975 under the Himachal Pradesh Ceiling on Land Holdings Act, 1972. He came to know about this when the Tehsildar came on the spot at the time of attestation of mutation. He was present at that time. He has given the number of mutation i.e. 7222. According to him, the land vested in the State after the mutation was attested. He has admitted that the Patwari has visited the spot at the time of girdawari. In view of the averments contained in the plaint read in conjunction with his statement, it is clear that the land vested in the State of Himachal Pradesh under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 free from all encumbrances. The learned District Judge has erred in law by shifting the onus on the defendant to prove that the possession was taken by the State Government. Initially, the burden was on the plaintiff to prove that the possession was not taken from Devta Sahib Kajal. The learned District Judge has put negative burden on the defendant to prove that the possession was taken over. It was for the plaintiff to prove that no notice u/s 12 was ever issued to the mortgagees to deliver the possession. It was for him to prove that the possession was not taken over by the defendant.

11. The plaintiff has made a definite, clear and specific averment in the plaint as well as in his statement that the property in question stood vested in the State of

Himachal Pradesh. He has not explained the admission made in the plaint by filing a replication. Rather, he has reiterated that the property stood vested in the State of Himachal Pradesh after the enforcement of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 in his statement as PW-1. It was for him to prove that earlier statement was erroneous or untrue. The admissions in pleadings are also binding. He ought to have contradicted or explained the admission made by him.

12. The learned District Judge has relied upon Nagubai Ammal and Others Vs. B. Shama Rao and Others, Their Lordships have held that it was no doubt true that what a party himself admits to be true may reasonably be presumed to be so, but before this rule can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained. In the present case, the plaintiff has made a clear and unambiguous statement while appearing as PW-1. Their Lordships in Nagubai Ammal and Others Vs. B. Shama Rao and Others, have held that an admission is not conclusive as to the truth of the matter stated therein. It is only a piece of evidence, weight to be attached to which must depend upon the circumstances under which it was made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. The plaintiff, as noticed above, has not explained that the statement made by him was erroneous or untrue.

13. Mr. Romesh Verma, Advocate appearing on behalf of the respondent has strongly relied upon State of Himachal Pradesh v. Harnama 1999 (1) Shim. L.C. 38. The judgment is distinguishable. In the present case, the plaintiff has made a categorical and unequivocal admission that the property vested in the State of Himachal Pradesh after the enforcement of the Himachal Pradesh Ceiling on Land Holdings Act, 1972. There was no admission by the parties in the judgment cited by Mr. Romesh Verma.

14. Their Lordships of the Hon''ble Supreme Court in Thiru John Vs. The Returning Officer and Others, , have held that an admission if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established". Their Lordships have held as under:

15. It is well settled that a party's admission as defined in Sections 17 to 20 fulfilling the requirement of Section 21, Evidence Act, is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established.

The substantial question No. 1 is answered accordingly.

15. Consequently, in view of the observations made hereinabove, the Regular Second Appeal is allowed. The judgment and decree dated 15.10.1998 passed by the learned District Judge are set aside and that of the learned trial Court dated 17.11.1997 are restored. No costs.