
(2009) 11 SHI CK 0045
In the High Court Of Himachal Pradesh

State of H.P.

APPELLANT

Vs

Baldev Ram and Another

RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 83, 86

Citation : (2009) 11 SHI CK 0045

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Vide order dated 20.12.2000, this Appeal was admitted on the following substantial questions of law.

1. Whether the Civil Court has no jurisdiction to go into the questions involved in the present case?
2. Whether Section 83 of the H.P. Abolition of Big Landed Estates and Land Reforms Act, 1953 has rightly been pressed into service in the present case for granting a declaration in favour of the respondents?
2. The present Regular Second appeal (RSA) u/s 100 of the CPC is against the judgment and decree dated 28th May, 1997, in Civil Appeal No. 63 of 1989, passed by the learned District Judge, Bilaspur, whereby the learned first Appellate Court while dismissing the aforesaid first appeal filed by the appellants herein affirmed the judgment and decree passed by the learned Sub Judge Ghumarwin in Civil suit No. 34/1 of 1986 titled as Baldev Ram and Anr. v. State of H.P., seeking declaration to the effect that they are owners in possession of the land comprised in Khasra No. 552 measuring 6 bighas 13 biswas situated in village Kotlu Brahmna Pargana Sunhani Tehsil Ghumarwin, District Bilaspur, H.P. (hereinafter referred to as "the land in dispute"), by virtue of sale and in the

alternative for adverse possession.

3. In brief, the facts giving rise to the present appeal can be stated thus. Respondents were the plaintiffs in the trial Court. It was their case that their father Shri Shiv Ram by oral sale had purchased the land in dispute from Shri Soda Ram son of Shri Jangi for a sum of Rs. 332/- on 6th May, 1948. The consideration amount was paid to the vender Soda Ram and the vendee their father was put into possession of the land in dispute. The acquisition of the right was reported to the Patwari concerned which was entered into revenue papers and entered mutation No. 326 in the Mutation Register, which was finally accepted and attested on 30.12.1957 by the Assistant Collector IInd Grade, Chumarwin. It was also their case that latter vide mutation No. 447 dated 2nd September, 1963, some of the land of previous owner Soda Ram was vested under the H.P. Abolition of Big Landed Estates and Land Reforms Act, 1953. The land in dispute owned by the respondent-plaintiffs was also included therein, which could not have been incorporated in the said mutation as Soda Ram was no more its owner after its sale in the year 1948. It was also averred in the plaint that after the death of their father Shiv Ram, respondent-plaintiffs remained in possession of the suit land through out till date openly, continuously, peacefully and without any interruption from any corner and the defendant- appellants had never dispossessed them. Therefore, they sought the relief as aforesaid.

4. The suit was resisted and contested by the defendant-appellants. They took-up the preliminary objections that the suit was bad for non-compliance of Section 80 of the Code of Civil Procedure, limitation, valuation viz-aviz. the point that the Civil Court had no jurisdiction to try and entertain the suit and also estoppel.

5. On merits, appellant-defendant admitted that Soda Ram was the owner in possession of the suit land but denied that it was ever sold by him to the father of the respondent- plaintiffs, as alleged. In fact, Soda Ram aforesaid remained in possession of the suit land till 1957 and the land in dispute was sold by him on 3rd September, 1957 and the land of Soda Ram came to be vested under the H.P. Big Landed Estates and Land Reforms Act 1953 in the State of H.P.. Thus the alleged sale is void abinitio and the mutation was wrongly attested in favour of Shiv Ram on 30th December, 1957. Thus, prayed for dismissal of the suit.

6. The respondent-plaintiffs denied the averments made against them in the written statement, however, they reaffirmed the even paras of the pliant on merit.

7. On the pleadings of the parties, learned trial Court framed the following issues on 15.10.1987.

1. Whether the plaintiffs are owners in possession over the suit land by way of sale, as alleged? OPP

2. If issue No. 1 is not proved, whether the plaintiffs are owners in possession over the suit land by virtue of adverse possession, as alleged? OPP

3. Whether the revenue entries qua the suit land are illegal and wrong, as

alleged? OPP

4. Whether the suit is within limitation? OPP

5. Whether no legal notice has been served by the plaintiffs, as alleged? OPD

6. Whether the suit is not maintainable, as alleged? OPD

7. Whether the suit is not properly valued, as alleged? OPD

8. Whether this Court has no jurisdiction, as alleged? OPD

9. Whether the plaintiffs are estopped to file the suit, as alleged? OPD

10. Whether the suit is bad for no-joinder of necessary parties, as alleged? OPD

11. Whether the plaintiffs have no cause of action? OPD

12. Relief.

8. The parties led their evidence and after hearing them the learned Court decided all the issues in favour of the respondent-plaintiffs and against the appellant-defendant. Consequent upon these findings, the suit was decreed on 19th May, 1989 and the said judgment and decree were assailed in appeal before the learned District Judge the first Appellate Court on the ground that the learned Trial Court miserably failed to appreciate the evidence on the record and drew wrong conclusions. It was also averred that the suit was barred by limitation and the revenue record w.e.f. 1967 onwards with respect to the land in dispute was in favour of the State of H.P. This documentary evidence was nowhere rebutted. The nature of the land was "charand" as admitted by the respondent-plaintiffs. The learned trial Court did not attach any importance to the revenue record produced in evidence on behalf of defendant-appellants and there was no proof of sale on record in favour of the father of the respondent-plaintiffs. The learned first Appellate Court on reappraising the evidence and after considering the points taken in appeal, did not find anything to conclude in favour of the defendant-appellants consequently dismissed the appeal on 28th May, 1997.

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

POINT No. 1

10. Undoubtedly, as per the proven facts on record Shri Soda Ram was owner in possession of the suit land prior to the alleged sale in favour of Shri Shiv Ram, predecessor-in interest of the respondent-plaintiffs. The main controversy on which both the Courts below have returned the findings in favour of the respondent-plaintiffs is that the suit land was sold in favour of Shri Shiv Ram father of the respondent-plaintiffs by Shri Soda Ram on 16th April, 1948. There are concurrent findings of facts on the issue and I do not find any perversity in it, which otherwise can be also not disputed in second appeal. Once this conclusion

is arrived at, the non-incorporation of the revenue entries in the Jamabandies subsequent to the sale aforesaid, more particularly after accepting and attesting the mutation, by the revenue Officials in favour of Shiv Ram and after his death, his successor-in-interest, a cloud is cast on the rights of the respondent-plaintiffs. Therefore, the Civil Court has a jurisdiction to go into the questions involved in the present case. Hence Point No. 1 is decided accordingly.

POINT No. 2.

11. In so far as the second point raised in appeal is concerned, the appellant-State is claiming their ownership in possession basing its claim on the strength of mutation No. 326 (Ext. RA) accepted and attested on 30th December, 1957, and Ext. D5 and D6 whereby the entire land including the suit land was mutated in favour of the State-appellant on 2nd September, 1963 under the H.P. Big Landed Estate and Land Reforms Act 1963 (Act No. 15 of 1954) and also the subsequent Jamabandies prepared after the said mutation. The Act No. 15 of 1954 aforesaid was enacted to provide for the abolition of the Big Landed Estates and Reform law relating to the tenancy in the State of Himachal Pradesh.

12. In the instant case, Section 83 of the Act is quite relevant. It provides for vesting of the proprietary rights in the State Government with respect to land covered under the Act. It reads as under:

83. (1) Notwithstanding anything contained in this Chapter, the State Government may, by a notification in the Gazette, declare that with effect from such date and in respect of such area or arrears as may be specified in the notification, all rights, title and interests including contingent interest, if any, recognized by law, custom or usage for the time being in force, of each landowner in land to which Section 80 applies shall be extinguished and such rights, title and interest shall be deemed to vest in the State Government free from all incumbrances.

(2) It shall be lawful for the State Government if it so considers necessary, to issue from time to time, the notification referred to in Sub-section (1) in respect of such area or areas as may be specified therein and all the provisions of Sub-section (1) shall be applicable to and in the case of every such notification. (3) Notwithstanding anything in Sub-section (1), the area of an orchard shall be taken into consideration for purposes of Sub-section (1) but it shall not be broken up in the process of acquisition of the rights, title and interests of the landowners and the entire area of orchard shall be left with the landowner even if its area in the District of Chamba exceeds thirty acres or its annual land revenue in the rest of Himachal Pradesh exceeds Rs. 125.

13. Section 84 of the said Act provides that when a notification u/s 83 has been published in the gazette notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in the said Act, the consequences as provided in the said Section shall from the beginning of the day of vesting would ensue in respect of the land to

which the notification applies and any contract or agreement made between the land owner and any other person on or after 1st of April, 1952 which has the effect of directly or indirectly preventing such vesting of any land of the land owner in the State Government or, to defeat any other provision of Chapter VIII of the said Act would become void from the date of vesting.

14. With reference to the above provision, the learned Deputy Advocate General failed to point out from the record the gazette notification as required u/s 83 of the Act aforesaid which could show from which dates the rights and title of the land owner in the suit would get extinguished. Once the notification declaring the land specified in the notification stands published in terms of Section 83, the Collector is supposed to take over the estate in terms of Section 86 of the Act. Since the State has failed to produce and prove the notification as required by law, no right or title would pass over to the State-appellant with respect to the land in dispute on the basis of the mutation in its favour, as claimed.

15. Contra the respondent-plaintiffs have clearly proved having purchased the suit land on 16th May, 1948 by Shiv Ram their father for a consideration and they continued to remain in possession till the filing of the suit. Therefore, I find that the learned trial Court has rightly and aptly applied the law and appreciated the aforesaid provisions of the H.P. Big Landed Estates and Land Reforms Act, 1953 in favour of the respondent-plaintiffs. Therefore, Point No. 2 stands accordingly answered.

16. For the reasons aforesaid I have no manner of doubt in my mind that in this second appeal, no interference is either warranted or called for and the appeal is accordingly dismissed. The judgment and decree of the learned lower appellate Court is affirmed and upheld with all consequences. Parties are left to bear their own costs.