

(1962) 11 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 7 of 1961

Sureshwari Datt

APPELLANT

Vs

Parma

RESPONDENT

Date of Decision : 29-11-1962

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 40, 54
Transfer of Property Act, 1882 — Section 111, 117

Citation : AIR 1963 HP 34

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : T.P. Vaidya, for the Appellant; D.R. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

C.B. Capoor, J.C.

1. This application in revision arises out of an appellate order of the learned District Judge Mandi and Chamba districts confirming the order of the learned Additional Subordinate Judge Mandi returning the plaint filed by the petitioner for presentation to the proper Court.

2. It is not disputed that a lease dated 16th Sawan 2004 B. beginning from Rabi 2005 B. to Kharif 2009 B. was executed by the petitioner's father in favour of the respondent in respect of the disputed land situate in village Chatter Bahal. The said land was transferred in favour of the petitioner by his father. The respondent did not give up possession over the disputed land after the expiry of the period of lease. The petitioner filed a suit for recovery of possession of the disputed land and of Rs. 2,500/- as mesne profits for the last three years.

3. The suit was, in the main, resisted by the respondent on the ground that the relationship of landlord and tenant subsisted between the parties and the suit was not cognizable by a civil Court.

4. The learned Additional Subordinate Judge raised a preliminary issue on the question of jurisdiction and decided it in favour of the petitioner. Thereafter he held that the suit was not cognizable by a civil Court and returned the plaint for presentation to the proper Court and, as has already been observed, an appeal preferred against that order did not succeed.

5. The only question that has been canvassed on behalf of the contestants is as to whether the order returning the plaint for presentation to the proper Court was sustain-able 2

6. The main line of the reasoning adopted by the learned counsel for the petitioner is that after the expiry of the period of lease the possession of the respondent over the disputed property became that of the trespasser and he ceased to be a tenant of the land and the relationship of landlord and tenant did not subsist between the parties at the time that the suit was filed. In support of the aforesaid contention reliance was placed upon the provisions contained in Section 111(a) of the Transfer of Property Act. That provision of law according to Section 117 of that Act is not applicable to agricultural leases in the absence of a notification to that effect by a State Government. It is not a matter in controversy that a notification has not been issued by the State Government applying the provisions of Section 111 to leases relating to agricultural land.

Faced with the aforesaid aspect of the matter, the learned counsel for the petitioner u"rged that even though Section 111 of the Transfer of Property Act might not be applicable to agricultural leases the principle underlying it was applicable as a rule of justice, equity and good conscience. It was pointed out in the case of Namdeo Lokman Lodhi Vs. Narmadabai and Others, that it was erroneous to suppose that every provision in the Transfer of Property Act was necessarily based on principles of natural justice, equity and good conscience and that it had to be seen in every case whether a particular provision of the Act related to a known rule of equity. In the aforesaid case the provision contained In Section 111(g) was not held to be based on the principle of justice, equity and good conscience. Clause (a) to Section 111 of the Transfer of Property Act which provides that a lease of immovable property determines by efflux of time limited thereby is necessarily not a recognition of the principle of justice, equity and good conscience and in any case it cannot be applied to agricultural leases which are governed by special laws.

7. It has secondly been urged on behalf of the petitioner that at the time of the institution of the suit the respondent was not a tenant even under the provisions of the tenancy laws.

8. "Tenant", according to Section 2(17) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, inter alia means a person who holds land under another person and is or but for a contract to the contrary would be liable to pay rent for that land to that other person. In a similar tune is the meaning of the word "tenant" under the Punjab Tenancy Act. The expression "holds land

under another person" has been the subject-matter of decision in more than one Full Bench decisions of the Punjab Courts and on behalf of the petitioner reliance has been placed upon the following cases in particular :--

(1) Cheta v. Baija AIR 1927 Lah 452 (FB).

(2) Parmanand and Others Vs. Rakha and Others, and

(3) Kidar Nath Vs. Dr. Prema Nand,

9. The first of the aforesaid cases was one for recovery of possession of agricultural land on the allegations that the plaintiffs and their ancestors had held the said land as occupancy tenants for more than 100 years, that acting under the provisions of Sections 42(b), 43 and 45 of the Punjab Tenancy Act the defendant had a notice of ejectment issued to the plaintiffs by the revenue officer; that the plaintiffs had u/s 45 (6) of the said Act instituted a suit contesting their liability to be ejected which was decided against them by the revenue Courts and their ejectment was ordered and in execution of the decree they had been ejected. The case was taken up to the High Court and the following question was referred for decision to the Full Bench :

"Whether a civil Court has jurisdiction to try a suit brought by a person, who has been dispossessed from his tenancy after a notice issued to him u/s 43 of the Tenancy Act, and who has been unsuccessful in a suit u/s 45 to contest his liability to ejectment, for possession of the land from which he has been ejected on the ground that he had a right of occupancy therein, and whether Section 77(3) (d) of the Act bars such a suit or not?"

The leading judgment was delivered by Broadway, J., and the first point formulated by him for decision was : Whether the plaintiffs fell within the definition of "tenant" and it was observed that if they did the civil Courts will not have jurisdiction. In the course of the order the following observation was made :

". . . .A person in possession of land without the right to possess it does not hold the land and is not a tenant."

The aforesaid observation is the main plank of the petitioner's argument and it has been contended that as the period for which the lease was made had expired the respondent did not have a right to possess the land and ex hypothesi was not a tenant. The observation quoted above purported to be the gist of a paragraph extracted from the judgment in another Full Bench case Joti v. Maya, 1891 Pun Re 44 which reads as below :

"To establish the complete relation of landlord and tenant between the, persons, within the meaning of the Tenancy Act, it is essential that two things shall concur viz. (1) a right to enter upon and possess the land, and (2) an entry into possession. Upon entry and not before, the person having the right becomes a "tenant" and "holds" the land under the person called the landlord. But when once the person having the right has entered into possession, he does not

merely by reason of a wrongful dispossession by the landlord or by a third person, cease to "hold" the land under the landlord and is not deprived of the character of tenant. The legal relation of landlord and tenant continues notwithstanding the dispossession."

10. With great respect to the learned Judge, it is submitted that the purported gist did not bring out the full import of the aforesaid paragraph. In a subsequent portion of the judgment agreement was expressed with the view that as soon as a person's "right to possess" as a tenant has been decided against him by a revenue Court and he is dispossessed in execution of a decree for ejectment he ceases to be a tenant and the aforesaid view which is based on the cases of Nihal Singh v. Kaman 1888 P R 9 (FB), Kharku v. Dittu 1893 PR 70 and Parman v. Lhasu 51 Ind Cas 443 : AIR 1919 Lah 297 (2)), in my opinion, represents the correct legal position. The determination of the relationship of landlord and tenant depends, to a large extent, upon ejectment in pursuance of a decree for ejectment.

11. In case No. 53 Aflatoon v. Jai Ram, 1893 Pun Re. 247 the plaintiff's suit for possession of land which had been given to the defendants for cultivation for a term of one year was not given up by the defendants in spite of repeated requests from the plaintiff. It was held that the relationship of landlord and tenant existed between the parties and there was nothing to show that that relationship had ever terminated or that the defendants had become mere trespassers and no longer tenants and that the suit was cognizable by a revenue Court.

12. In view of what has been said above, it is not necessary to examine the 1952 Punjab cases Parmanand and Others Vs. Rakha and Others, and Kidar Nath Vs. Dr. Prema Nand, at length and suffice it to say that none of them, as will presently appear, was a suit filed by the landlord for recovery of possession of the demised land on the expiry of the term. In AIR 1952 Punj 94 the tenant had been forcibly dispossessed and he filed a suit in the civil Court for recovery of possession after one year of his forcible dispossession and it was held that the forum for such a suit was the civil Court. In Kidar Nath Vs. Dr. Prema Nand, damages were sought to be recovered by a landlord against a tenant on account of breach of contract and it was held that the suit lay in the civil Court.

13. The Punjab Tenancy Act was applicable to Himachal Pradesh prior to the coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act 1953. Section 40 of the former Act provides for the ejectment of a tenant holding for a fixed term at the expiration of that term and on any of the grounds stated in Clauses (a) to (c) of that section before the expiration of the term. The latter Act, however, does not contain that provision. Section 54 of the latter Act sets forth the grounds on which a tenant not having a right of occupancy can be ejected and except for the case of leases made in accordance with Section 48 the expiry of the term fixed is not a ground for ejectment.

It has been contended on behalf of the petitioner that provision was not made for the ejectment of a tenant for a fixed term at the expiration of the term as it was considered to be redundant by the Himachal Pradesh Legislature in view of the provisions contained in Section 111(a) of the Transfer of Property Act whereas the contention advanced on behalf of the respondent has been that it was not the intention of the Legislature that a tenant for a fixed term should be liable to ejectment at the expiration of the term and as such no provision was made in the Himachal Pradesh Act. For the purposes of this case it is not necessary for me to express a categorical opinion as to which of the aforesaid contentions is sound, but, as at present advised, my preference is for the second contention. If the Legislature had considered the provision to be redundant and surplusage it would not have made provision for the ejectment of a tenant in whose favour a lease is executed in accordance with Section 48 of the Act. In this connection it may with advantage be stated that in Section 49 of the Himachal Pradesh Act provision has been made for relinquishment by a tenant holding for a fixed term under contract or decree or order of the competent authority.

14. On behalf of the petitioner it has been urged that even if it be held that u/s 54 of the Himachal Pradesh Act a tenant for a fixed term under a contract, decree or order of a competent authority (barring of course the tenant in whose favour a lease is executed in accordance with Section 48 of the Act) is not liable to be ejected at the expiry of the term the cause of action for the present suit had arisen prior to the coming into force of the Himachal Pradesh Act, referred to above, and he had a vested right to enforce that cause of action in a civil Court and in support of that contention reliance was placed upon Sub-section (1) of Section 148 of the Act. That sub-section reads as below :

"The repeal of the Punjab Tenancy Act 1887 as applied to Himachal Pradesh under Section 147 shall not affect its previous operation."

15. The petitioner had not commenced any action against the respondent under the provisions of the Punjab Tenancy Act as applicable to Himachal Pradesh prior to the coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. The suit which has given rise to this revision does not purport to be and is not under the provisions of the Punjab Tenancy Act and it could not, therefore, be said with any show of reason that the filing of such a suit was saved by Sub-section (1) of Section 148, referred to above. The case of Chanchal Ram v. Union of India, AIR 1953 Himachal Pradesh 79, relied upon on behalf of the petitioner, is clearly distinguishable from the instant case. In that case the succession had opened while the Mandi Land Revenue Regulation (8 of 1975 Samvat) was in force and it was in that context held that the rights of the parties were governed by Section 19 of the Regulation despite its repeal and despite the fact that the Hindu Law and not the said Regulation was in force on the date of the institution of the suit.

The Legislature again is all powerful and it is within its province to affect even vested rights. The effect of Section 54 of the Himachal Pradesh Act, referred to

above appears to be that a tenant for a fixed term other than a tenant in whose favour a lease has been executed in accordance with Section 48 of the Act is not liable to be ejected except on one or more of the grounds set forth in the section and in so providing the Himachal Pradesh Legislature cannot be said to have transgressed its powers.

16. The question as to whether on the expiry of the period of a lease relating to agricultural land the lessee becomes a trespasser and a suit for possession of the demised land can lie in a civil Court came up for decision before my learned predecessor-in-office in Civil Revns. Nos. 3, 4 and 5 of 1957 (Parshottam v. Girdhari, Nota Ram v. Girdhari and Nota Ram v. Jauni, respectively) decided on 22-3-1957 and it was held that such a suit was cognizable by a revenue Court. The contention advanced on behalf of the petitioner that the aforesaid cases were distinguishable inasmuch as they purported to be under the Punjab Tenancy Act and not under those of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act is not correct. The provisions of the Himachal Pradesh Act, as appears from the judgment, were to the mind of the learned Judicial Commissioner.

17. In fine, the legal position re : land as defined in the tenancy laws appears to be that if once the relationship of landlord and tenant comes into existence it continues unless it is terminated in accordance with the provisions of the tenancy laws.

18. In the instant case the relationship of landlord and tenant between the parties has not terminated in accordance with the provisions of the Himachal Pradesh Abolition of Bis Landed Estates and Land Reforms Act and by virtue of Section 111(3)(e) of the aforesaid Act the revenue Court alone has jurisdiction to entertain the suit for ejectment against the respondent.

19. For the foregoing reasons and following the earlier decision of this Court in Civil Revisions Nos. 3, 4 and 5 of 1957 (Him Pra) (supra), I hold that the forum chosen by the petitioner was not proper.

20. In the plaint the respondent has been described to be a trespasser and in its present form it is not entertainable by a revenue Court and it would have been more in the fitness of things if the petitioner had been required to amend the plaint so as to be entertainable by a revenue Court and thereafter to order its return for presentation to the proper Court and in the event of the petitioner refusing to amend the plaint to dismiss the suit. At this late stage of the case I do not propose to take notice of the aforesaid procedural defect.

21. The petition in revision is accordingly, dismissed with costs.