

(2010) 12 SHI CK 0470

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 201 of 2000

Sushil Kumar Sharma and Another

APPELLANT

Vs

Chaina Ram and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 2(7)
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 12 SHI CK 0470

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal, by the successors of the original Plaintiff, is directed against the judgment and decree passed by the learned District Judge Kangra at Dharmshala in Civil Appeal No. 77-P/XIII/99 whereby he dismissed the appeal of the Plaintiff and upheld the judgment and decree of the learned trial Court dismissing the suit of the Plaintiff.

2. Original Plaintiff Salig Ram Vaid filed a suit for possession of one half share of the suit land. According to the Plaintiff, he was owner of the said land alongwith other co-sharers and that he alongwith other co-sharers had given the suit land to the predecessors-in-interest of the Defendants on lease on payment of Rs. 275/- per annum as "Chakotadar". It was alleged that the Plaintiff does not want to retain the Defendants and wants to manage the suit land himself. The suit land is a tea-garden and Banjar land and not cultivable land and hence the suit for possession.

3. The stand of the Defendants is that they were non-occupancy tenant over the suit land and after coming into force of the H.P. Tenancy and Land Reforms Act have become owners of the same and therefore, the suit is liable to be dismissed.

4. During the pendency of the suit, the Plaintiff filed an application for

amendment of the plaint and as per this amendment the Plaintiff wanted to take the plea that the Defendants were licensees and not lessees. Both the Courts below came to the conclusion that the Plaintiff being the original owner having admitted that the Defendants were lessees could not now be permitted to take up the plea that the Defendants were only licensees.

5. The Courts also held that there is sufficient evidence on record to show that originally the suit land was leased out by Smt. Pingla, aunt of the Plaintiff to Sukh Ram, predecessor-in-interest of the Defendants on a Patta in the year 1925 on payment of annual lease money of Rs. 700/-. The Defendants continue to be in occupation since then. Ext.P-11 is copy of the mutation attested on 26.4.1926 which is evidence of the fact that the land was given to Sukh Ram as Pattedar on payment of Rs. 700/- annually. The other revenue record also shows that Sukh Ram continued to be in possession and thereafter his heirs were shown to be in possession of the land in question. The original lease deed expired in 1944 and it is apparent that after the expiry of the lease the predecessors-in-interest of the Plaintiff did not taken any steps to evict the tenant(s) and therefore, the Defendants continue to occupy the property as tenants.

6. Though various questions were framed at the time of admission of this appeal but in my view the only question which actually arises is whether a tea estate is agricultural land within the meaning of the H.P. Tenancy and Land Reforms Act land. The main contention raised in this behalf is that since the land in question is entered as tea-garden and Khareter, the provisions of the H.P. Tenancy and Land Reforms Act are not applicable to the case and proprietary rights cannot be granted to the Plaintiff. It is urged by Shri Romesh Verma, learned Counsel for the Appellants that the land is not agricultural land within the meaning of Section 2(7) of the H.P. Tenancy and Land Reforms Act, which reads as follows:

(7) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes-

- (a) the sites of buildings and other structures on such land,
- (b) orchards.
- (c) ghasnies,
- (d) banjar land, and
- (e) private forests.

7. It is thus clear that any land which is not occupied as the site of the building in a town or a village and is used for agricultural purposes or any purpose subservient to agriculture is land within the meaning of the Act and will include sites of structure and buildings over such land; orchards; ghasnies; banjar land and private forests.

8. Reliance has been placed on a judgment of a Division Bench of this Court in

Mrs. Peter Butt and Ors. v. Sister Roseline Kokara 1992 (2) Sim. L.C.124. This judgment is totally inapplicable to the present case because in that case the question which was decided was that a garden which was part of a house and used as a garden/lawn of the house could not be deemed to be an agricultural land.

9. In *State of Himachal Pradesh v. Maharani Kam Sundari* 1984 Sim. L.C. 393, this Court held that to be covered under the definition of land two conditions must be satisfied. Firstly it must not be occupied as the site of the building in a town or village and secondly, it must have been occupied or let for agricultural purposes. A tea estate is an agricultural vocation. Therefore, a tea garden is agricultural land within the provisions of the H.P. Tenancy and Land Reforms Act and hence the tenancy could not be terminated by a notice simpliciter u/s 106 of the Transfer of Property Act and tenants of such agricultural property would be entitled to get proprietary rights in terms of Section 104 of the said Act.

10. In view of the above discussion, I find no merit in the appeal, which is accordingly dismissed. No order as to costs.