

(2019) 12 SHI CK 0081

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 95 Of 2009

Vyasa Devi And Others

APPELLANT

Vs

Bihari Lal

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Himachal Pradesh Tenancy And Land Reforms Act, 1972 — Section 31, 104, 104(iii)

Citation : (2019) 12 SHI CK 0081

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Y.P Sood, Bhuvnesh Sharma

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The learned Civil Judge (Sr. Div) Court No.1, Una, District Una, H.P., upon, Civil Suit No. 221/92, instituted, as, plaintiff, by, Suhru Ram, against, Bihari Lal, declined, vis-a-vis, him, the, espoused declaratory relief, qua, his holding the status, as, a "Gair Marusi", vis-a-vis, the suit land. However it made decree, vis-a-vis, him and, against, Bihari Lal, whereupon, the latter became restrained from forcibly evicting him, from, the suit land excepting, though, his recouring the process, of, law, and, also, upon, Civil Suit No. 233/92 instituted, as, plaintiff, by, Bihari Lal, against, Suhru Ram, and, wherein the afore plaintiff rather claimed rendition, of, a decree of permanent injunction, it recorded, a, conjoint order, of, dismissal thereon(s).

2. Both the afore Civil Suits were decided, under, a common verdict, recorded, on, 10.5.2006, hence by the learned trial Judge. Both the aggrieved therefrom cast separate appeal(s) thereagainst, before, the learned Additional District Judge, Fast Track Court, Una, H.P.

3. Aggrieved Bihari Lal instituted, two, Civil Appeal(s) respectively bearing No. 16/06, and, No. 17/06, in as much, as, one became reared against the dismissal

of his suit, for, injunction, and, other became reared against, the, part decreeing, vis-a-vis, the plaintiff Suhru Ram's suit, wherethrough, he become restrained, from, evicting Suhru Ram, from, the suit land except in due course, of, law. Suhru Ram instituted Civil Appeal No. 21/06 against, the, declining to him, the relief of declaration, qua his being pronounced, to be, holding the status of "Gair Marusi", vis-a-vis, the suit land. All the afore appeals were decided, under, a common verdict recorded on 6.12.2008, and, therethrough all the afore appeals, became dismissed.

4. The instant appeal is preferred, at, the instance of Suhru Ram (now deceased), upon, his becoming aggrieved, against, the concurrently recorded verdicts, against him, by both the Courts below, wherethrough, the espoused relief, of, declaration qua his being pronounced, as "Gair Marusi", vis-a- vis, the suit land became declined to him.

5. When the instant appeal, came up, for, admission, this Court admitted the appeal, on, 13.3.2009, on, the hereinafter extracted substantial questions of law:-

1. Whether the documents exhibit P-1 could be ignored by the courts below as having been not pleaded whereas it was specifically pleaded in the written-statement filed by the appellant in the suit filed by the respondent and the findings thus are vitiated?

2. Whether the Courts below have misread and mis appreciated the statements of PW-2 and PW-3 who have proved the due execution of exhibit P-1 by late Smt. Bhagti original owner?

Substantial questions of law:-

6. All the revenue documents, as, appertaining to the suit khasra numbers, and, as, comprised in jamabandi(s) commencing since 1978-1979, hence, make clear revelations, vis-a-vis, the suit land, becoming therein disclosed, to be, in cultivation, of, one Smt. Bhagti, and, therein the name, of, plaintiff Suhru Ram, does not occur. However, in pursuance, to, an order made, on, 28.3.1995, by the Land Reform Officer Settlement, Una, the name, of, plaintiff Suhru Ram was recorded, as, Kabij, vis-a-vis, the suit khasra numbers. However, the column of rent, of the apposite Jamabandi, remained blanked, and, thereupon both the Courts below hence concluded, that, the simplicitor entry, of, the plaintiff Suhru Ram, as, Kabij, vis-a-vis, the suit khasra numbers, dehors, the column, of, rent of the apposite jamabandi, hence carrying apposite entries, rather not being amenable, for, constraining a conclusion, vis-a-vis, the status of Suhru Ram, vis-a-vis, the suit khasra numbers, being, in, the capacity of, a, "Gair Marusi".

7. The further sequel thereof being, qua, the further conclusion, as, made by both the Courts below, vis-a-vis, presumption of truth, enjoyed by the revenue entries, appertaining, to, the suit khasra numbers, wherein, Smt. Bhagti, is shown, to be owner in possession of the suit land, hence, remaining undisplaced,

(i) and, nor the plaintiff Suhru Ram, holding any capacity, to, validly strive for rendition, of, a declaratory decree, becoming pronounced, vis-a-vis, him qua his holding, the, capacity of a 'Gair Marusi', vis-a-vis, the suit khasra numbers, (ii) nor, his holding the capacity, to become entitled, to, seek a declaration, vis-a-vis, the apposite statutory rights, as, owner(s), vis-a-vis, the suit khasra numbers, becoming conferable, upon, him.

8. However, both the learned Courts below, appear, to, relegate into the realm of oblivion, the, import of Ex. P-1, (i) whereon the undisputed thumb mark, of, the afore Bhagti rather exist(s). Since, the, drawing of Ex. P-1, remains uncontested, and, also, its, containing recitals, qua hence, vis- a-vis, the suit khasra numbers one Smt. Bhagti, the land owner concerned, rather acquiescing, vis-a-vis, the plaintiff, Suhru Ram holding therein, the, capacity, as, a "Gair Marusi". Moreover, also with candid recitals becoming borne therein, vis-a-vis, apart from, and, excepting the suit khasra numbers, the afore Suhru relinquishing all his subsisting interests therein, vis-a-vis, Smt. Bhagti, appear to become, capitalized by both, the, Court below, to, draw a conclusion qua thereon(s), (a) hence, the statutory bar embodied in Section 31 of the Himachal Pradesh Tenancy and Land Reforms, Act (for short "the Act"), provisions whereof stand extracted hereinafter, (b) and, wherein an explicit embargo is created, against, the tenant relinquishing, his apt tenancy, vis-a-vis, the land owner, except vis-a-vis the State Government, in, hence theirs proceeding to make a conclusion, vis-a-vis, the apt relinquishment made in Ex.P-1, hence, completely barring Suhru, dehors, vis-a-vis, the extant suit khasra numbers, rather the land owner accepting the plaintiff one Suhru to be "Gair Marusi", to claim tenancy thereon, (c) and, also on the afore analogy, both the Court below declined, to, accept the proven recitals, borne in Ex. P-1, wherethrough, the plaintiff Suhru Ram, was acquiesced, by, the afore land owner one Bhagti, to be, "Gair Marusi", vis-a-vis, the suit khasra numbers.

31. Relinquishment- No relinquishment of a tenancy shall be made by a tenant in favour of land-owner. However, if a tenant wants to make a voluntary surrender of his tenancy land, the same shall be in favour of the State Government. The state Government shall have right to induct any suitable tenant or landless agricultural labourer to the relinquished land in the manner to be prescribed."

9. The afore omnibus application, of, the mandate of Section 31 of the Act, vis-a-vis the extant suit khasra numbers, is, also yet outside the domain of Section 31, of, the Act, (i) and, also arises from, a, gross mis-appraisal of the proven recitals, borne in Ex.P-1, (ii) wherein apart from Suhru rather relinquishing his right, title and interest, excepting, vis-a-vis, the suit khasra numbers, rather the afore land owner also acquiesced qua his in so far, as, the extant khasra numbers are concerned, hence holding possession thereof, in, the capacity of a "Gair Marusi" thereon(s).

10. The exclusion therein, of, the extant suit khasra numbers, and, also with the latter becoming provenly recited therein, to be held by the plaintiff Suhru, in, the

capacity, as, a "Gair Marusi", and, obviously, its not making any display, vis-a-vis, hence Suhru, relinquishing, vis-a-vis, the land owner, his interest, as, tenant, vis-a-vis, the extant khasra numbers, (i) rather Ex. P-1 making evident trite display qua the land owner rather acquiescing vis-a-vis his capacity thereon being as a "Gair Marusi". Consequently with there being no apt relinquishment(s), vis-a-vis, the extant suit khasra numbers, rather thereons, tenancies becoming created, hence, the mandate of Section 31 of the Act, and, appertaining to a bar against relinquishment by the tenant, vis-a-vis, the land owner, excepting vis-a-vis, the state Government, was not workable vis-a-vis the suit khasra numbers.

11. Further thereonwards, the mandate of Section, 104 of the Act, especially the proviso underneath sub section (iii), provisions whereof stand extracted hereinafter, and, with its containing, an explicit mandate, qua upon any tenancy becoming created, even after, the commencement of the Act, thereupon the mandate embodied, in, sub Section (iii) of Section 104 of the Act, (i) hence making statutory bestowment(s), conferment(s), of, proprietary rights, upon, a "Gair Marusi" also becoming operationalized. Consequently, when, in tandem therewith, hence with Suhru becoming pronounced in Ex.P-1, to be "Gair Marusi", vis-a-vis, the extant suit khasra numbers (ii) thereupon, even if Ex. P-1 became drawn in the year 1990, hence subsequent, to, the coming into force, of, the provisions, of, the Act, (iii) yet with the proviso(s), occurring underneath sub-section (iii) of Section 104 of the Act, hence vesting a right, in, a "Gair Marusi", and, whereuponwhom, tenancy rights are created, subsequent to the coming into force of the act, all, the apposite vesting rights, as, owners, vis-a-vis, the suit khasra numbers, (iv) thereupon, the acquiesced status of the plaintiff Suhru, as, Gair Murusi by his land owner, as, emerges from Ex.P-1, does vest in him, all, the statutory bestowment(s), as, embodied in sub-section (iii) of Section 104, of, the Act.

"(iii) the right, title and interest in the rest of the tenancy land of the landowner, who is entitled to resume land under clause (i) and (ii) shall vest in the tenant free from all encumbrances with effect from the date to be notified by the State Government in the Official Gazette:"

12. In view of the above, there is merit in the appeal, and, the same is accordingly allowed, and, the impugned verdict is quashed and set aside. Substantial questions of law are answered accordingly. Records be sent back. No costs.