

(2014) 02 P&H CK 0197

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 1656 of 1986 (O and M)

Hira Lal

APPELLANT

Vs

Gram Panchayat of village
Dundahera

RESPONDENT

Date of Decision: Feb. 18, 2014

Citation: (2014) 3 RCR(Civil) 592

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Adarsh Jain, Advocate for the Appellant; A.S. Grewal, Advocate for the Respondent

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

The plaintiffs have filed this appeal against the judgment and decree of the lower Appellate Court by which their suit for declaration was dismissed. The brief facts of the case are that the plaintiffs filed a suit for declaration that being the occupancy tenants, they have become owners of the suit land in terms of the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for short "the Act") and have prayed that the entry in the revenue records showing the respondent to be owner in possession is illegal and not binding on their rights.

2. The suit was contested by the defendant, inter alia, on the ground that the Civil Court had no jurisdiction to try and adjudicate the suit in view of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "1961 Act") as the Civil Court had no jurisdiction in view of 77(3)(d) of the Punjab Tenancy Act, 1887 (for short "Tenancy Act").

3. On the pleadings of the parties, issues were framed and both the parties led their respective evidence.

4. Learned Trial Court decreed the suit but the lower Appellate Court though returned a categorical finding that "in this view of the situation, the view of learned Trial Court that the plaintiffs have acquired occupancy rights in whole of the suit land, being wholly in accordance with the material available on the record, is upheld", yet dismissed the suit on the ground that "in the instant case, the only question to be decided by the civil court was whether the land was or was not shamlat deh because the plaintiffs respondents had acquired occupancy rights with respect to the same. In this view of the situation, I have no option but to hold that the civil Court has no jurisdiction to try and entertain the present suit". It is further held by the lower Appellate Court that "in the instant case, the claim is not to the establishment of occupancy rights but only that the plaintiff-respondents have become owners on account of operation of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952".

5. Counsel for the appellants has submitted that the lower Appellate Court has committed a patent error of law in dismissing the suit of the plaintiffs on the ground that the suit is barred u/s 13 of the 1961 Act though there was no such prayer made in the suit as to whether the suit land is or is not shamlat deh. It is submitted that the lower Appellate Court itself has observed that the plaintiffs have acquired occupancy rights and the suit has been filed only to the effect as to whether they have become the owners on account of the operation of the Act or not. In this regard, it is submitted that in order to give a declaration as to whether the occupancy tenant has become the owner of the land, only the Civil Court had the jurisdiction and reliance has been placed upon a Full Bench decision of this Court in the case of [Shiv Charan Vs. The Financial Commissioner, Revenue Department and Others](#),

6. Thus, the question of law raised is as to "whether the suit filed by the plaintiffs before the Civil Court is maintainable for seeking a declaration about the ownership rights acquired by the occupancy tenants in view of the provisions of the Act".

7. Counsel for the respondent has submitted that since the property in dispute belongs to the Gram Panchayat, therefore, a title suit could only be filed u/s 13 of the 1961 Act and for that Civil Court jurisdiction is barred.

8. It is not disputed by the counsel for the parties that when the notice was issued in this appeal on 05.06.1986, it was ordered to be heard along with RSA No. 1671 of 1986. The said RSA No. 1671 of 1986 has already been decided by this Court with the following order:-

"Counsel for the respondents states that the present appeal is covered against the appellant in view of the Full Bench judgment of this Court in the case of [Shiv Charan Vs. The Financial Commissioner, Revenue Department and Others](#), Learned counsel for the appellant could not dispute the aforesaid submission.

In view of the aforesaid facts, this appeal is ordered to be dismissed being covered by the aforesaid decision."

9. In Shiv Charan's case (supra), the issue was as to whether the Civil Court or the Revenue Court has the jurisdiction to grant declaration of ownership to an occupancy tenant. It has been held by the Full bench that there are two types of occupancy tenants, namely, (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. It was held that the Civil Suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2(f) of the Act.

10. Consequently, the question of law that has been raised by counsel for the appellants is answered in his favour and it is held that the Civil Court had the jurisdiction to try and adjudicate the suit filed by the plaintiffs who wanted to get a declaration about the right of ownership accrued to them on being recorded as occupancy tenants, by virtue of the provisions of the Act. Thus, the present appeal is hereby allowed, the judgment and decree of the lower Appellate Court is set aside and that of the Trial Court is restored.