

Tulsa Singh Vs Agya Ram and Others

Court: High Court of Himachal Pradesh

Date of Decision: April 7, 1994

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 41 Rule 27, 100
Himachal Pradesh Tenancy and Land Reforms Act, 1972 " Section 104

Citation: AIR 1994 HP 167 : (1994) 2 ShimLC 434

Hon'ble Judges: A.L. Vaidya, J

Bench: Single Bench

Advocate: S.S. Kanwar and Pritma Malhotra, for the Appellant; H.K. Bhardwaj, for the Respondent

Final Decision: Dismissed

Judgement

A.L. Vaidya

1. The dispute between the parties pertained to the tenancy rights which they were claiming in the suit land measuring 3 Kanals 16 Marias bearing

Khe-wat No. 134, Khatauni No. 300 and Khasra No. 14/4/2 situate in village Santokhgarh, Tehsil and Distt. Una. The present respondents, that

is, Garibu deceased and Bal-krishan minor were the plaintiffs in the suit filed for declaration before the trial court. Their simple case had been that

plaintiff No. 1, that is, Garibu and father of plaintiff No. 2 were in occupation of the suit land as tenants at Will on payment of rent for the last so

many years and after the death of father of plaintiff No. 2 the plaintiffs have been in continuous possession of the suit land as tenant at Will.

According to the plaintiffs, the present appellant Sh. Tulsa Singh was a clever person who connived with Patwari Halqua and got himself

incorporated in the revenue record in Kharif 1976 as tenant at Will of the suit land without any right, title and interest. This entry in the name of

defendant Tulsa Singh has been assailed to be illegal and wrong entry. It has been pleaded that on the basis of this wrong entry defendant Tulsa

Singh had been threatening to interfere in possession of the plaintiffs. The plaintiffs as such filed a suit for grant of decree for declaration to the

effect that they were in occupation as tenant at Will on payment of rent under the landlord of the suit land and entry in the revenue record in the

name of defendant as tenant at Will in Kharif 1976 was wrong, incorrect, illegal having no effect on the tenancy rights of the plaintiff. As a

consequential relief, plaintiff asked for prohibitory injunction and as an alternative relief they sought for possession of the suit land.

2. The defendant in the written statement denied the averments of the plaintiffs made in the plaint. On the other hand, it was pleaded that neither

plaintiffs nor their predecessors were in occupation of the suit land. However, according to the defendant he was in occupation of the suit land as a

tenant and after the enforcement of H.P. Tenancy and Land Reforms Act (hereinafter refer to as "the Act") he has become owner in possession of

the suit land. He further pleaded that actually plaintiffs were in occupation of some other land under the same landlord. The defendant in his

written statement made it very clear that he was in actual possession of the suit land along with other land since 1968 as tenant on payment of rent

and has been rightly so recorded in the revenue record by the authorities.

3. On the pleadings of the parties, the trial court framed the following issues :

1. Whether the defendant is tenant of the suit land as alleged?

O.P.D.

2. What is the effect of non-mentioning of the value of the suit for court fee etc.?

O.P.P.

3. Whether the plaintiffs are in possession of the suit lands as tenants under the owner?

O.P.P.

3-A(ii) Whether the plaintiffs are entitled to the injunction as prayed for?

O. P. P.

4. Relief.

4. Issue No. 1 was decided by the trial court against the defendant while remaining issues were disposed of in favour of the plaintiffs. The suit of

the plaintiffs for declaration and injunction was decreed.

5. The aforesaid judgment and decree were assailed by the present appellant before the lower Appellate Court on various grounds. However, the

lower Appellate Court after hearing the parties dismissed the appeal.

6. The aforesaid Judgment and decree passed by the lower Appellate Court have been assailed in the present appeal on various pleas, the main

being that judgment and decree were liable to be quashed on the ground that the Civil Court had no jurisdiction to try and entertain the suit and the

lower courts below erred, in deciding the case, in appreciating law and proved facts on record.

7. I have heard the learned counsel for the parties and minutely scrutinized the record.

8. Learned counsel for the appellant has contended vehemently that as the appellant had already been granted proprietary rights u/s 104 of the Act

and there- fore the civil court will have no jurisdiction whatsoever to entertain and decide the case of present nature, where the rights of tenancy in

favour of appellant stood legally decided under the provisions of the Act by the competent authority and civil court will have no jurisdiction to again

go into that controversy. The learned counsel in support of the aforesaid contention has tried to rely upon (1991) 1 SLC 223 Chuhniya Devi v.

Jindu Ram.

9. In the reported case the appellants came up before the Full Bench for answer to the question whether civil court had jurisdiction in respect of an

order,

(a) made by the competent authority under the H.P. Land Revenue Act, 1954, and

(b) of conferment of. proprietary rights u/s 104 of the H.P. Tenancy and Land Reforms Act, 1972, In so far as present case was concerned point

(b) above was more relevant.

10. In this Chuhniya Devi case (supra) their Lordships answered to the question as under :

(a) that an order made by the competent authority under the H. P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent

that it related to matters falling within the ambit of Section 37(3) and Section 46 of that Act; and

(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights u/s 104 of the Act, except in a

case where it was found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial

procedure or where the provisions of the Act had not been complied with.

11. I think the applicability of the principle disposed of in the aforesaid case on the basis of the facts involved and proved on record in the present

case was not at all called for.

12. Firstly, in Chuhniya Devi's case 1991 (1) S LC 223 referred to above the dispute was between the landlord and tenant but in the present case

the dispute is between the two persons alleging themselves to be the tenant,

13. Secondly, in the aforesaid reported case the proprietary rights had been granted in favour of the tenant by the competent officer under the Act

and that too in the presence of the landlord. In the case under reference the suit Was filed on February 4, 1977 and the proprietary rights were

granted initially through mutation No. 2649 Ex. D-5 on record sanctioned on December (sic).

14. Thirdly, it may be pointed out that the suit was filed on February 4, 1977 and the written statement was filed by the defendant-appellant on

March 25, 1977 while replication was filed on April 12, 1977, meaning thereby the present appellant was in full knowledge of the present suit

where his tenancy rights were being assailed in so far as on the date when the proprietary rights were conferred in his favour. The appellant did not

bring to the notice of the Revenue Officer under the Act sanctioning of mutation of proprietary rights in his favour, pertaining to the alleged civil

suit. Thus, the order of proprietary rights in favour of the appellant was granted in the absence of the present plaintiffs.

15. Fourthly, it may again be referred that the landlord preferred an appeal before the Collector, Una, assailing the order of grant of proprietary

rights in favour of the present appellant which appeal was accepted and the case was remanded back to the Assistant Collector, for decision,

afresh as is evident from Ex. P-5, certified copy of the order of the Collector. Order of the Collector is dated April 5, 1978 and thereafter finally

the proprietary rights in favour of the appellant were granted behind the back of the present plaintiff-respondent, though later mutation granting

proprietary rights has not been brought on record.

16. The aforesaid facts which have been proved on record clearly make the present case of an altogether different nature than the facts involved in

Chuhniya Devi's case 1991 (1) SLC 223 referred to above. The applicability of the ratio of that judgment as such on the basis of dissimilarity of

the facts in the two cases is not at all called for.

17. It has been contended on behalf of the appellant that after the grant of proprietary rights in favour of the appellant, he became the owner in

possession of the suit land which entry on the basis of the mutation sanctioned in his favour was carried over to the later entries in the record of

rights and on that basis it is being submitted that those entries cannot be interfered with in the present suit. The learned counsel's line of argument in

this particular behalf has been that once name of the appellant has appeared in the record of right, the present suit on that score cannot be

entertained or decreed, setting aside those entries in the record of rights. I think such a plea is not legally available to the appellant inasmuch as the

plea has not been supported by any law whatsoever. On the other hand, it is well established principle of law that legal presumption of truth would

be attached to the latest entry in the record of right but that presumption is rebuttable one. It is well settled law, that this legal presumption can be

rebutted in case latest entries were incorporated on the basis of the changed entries which on inquiry are held to have been changed without

authority and against law in this particular behalf. The rebuttal of latest entry in a case of this nature would be automatic.

18. Needless to say, the entry in favour of the present appellant for the first time in the revenue record came into existence in Kharif 1976 and

prior to that all entries in the record of right recorded the plaintiffs or their predecessor to be in occupation of the suit land as tenant on payment of

rent. In case this change in Kharif 1976 in favour of the defendant-appellant is held to be illegal, unsustainable and against law the subsequent

entries on the basis of this illegal entry shall be demolished inasmuch as the base for subsequent entries if removed the subsequent entries

automatically shall fall, rendering them without any legal value. Here is a case of that very nature.

19. The two courts below have come to unanimous conclusion that change of entries in the name of defendant-appellant in Kharif 1976 was wrong

and the entries in the name of the plaintiffs as a consequence thereof had to be continued. I also do not find any reason to differ with those

concurrent findings of facts. Otherwise also in case, on factual side the case is appreciated, the inferences remain the same as have been drawn by

the two courts below.

20. Ex. P-1 is the copy of Jamabandi for the year 1973-74 wherein the plaintiffs have been recorded to be in occupation of the suit land as non-

occupancy tenant on payment of rent to the landlords. The name of defendant-appellant nowhere appeared in this entry. Ex. P-2 is the copy of

Khasra girdawari from 26-10-1974 to 26-10-1976 wherein for the first time the name of the defendant-appellant as tenant has been recorded in

Kharif 1976. Ex. P-3 is the copy of Jamabandi for the year 1967-68 wherein also plaintiffs have been recorded to be in occupation of the suit land

as tenant on payment of rent. Similar is the entry in Ex. P-4, copy of Jamabandi for the year 1955-56. Any way, record of rights, prior to change

of entry in favour of defendant-appellant, recorded plaintiffs or their predecessor to be in occupation of the suit land as a tenant on payment of

rent.

21. Ex. D-1 is the certified copy of the report of Roznamcha dated October 29, 1975, wherein it has been recorded that at the spot some change

in the actual occupation of some land referred in the report were found which included the suit land also. This entry was alleged to have been

recorded in the presence of S/Sh. Hans Raj Nambardar, Bishan Dass, Tarsaim Lal, Batna Ram, Ram Rakha, Garibu Tulsa Singh and one Hukma.

22. It is being argued on the strength of this Ex. D-1 that the change in column of occupation of the suit land was noticed on October 29, 1975

which was incorporated in favour of Tulsa Singh in Kharif 1976 and factum of this change was recorded in the presence of one of the plaintiff Sh.

Garibu, therefore, it was being inferred that Garibu had consented for such a change.

23. I, think the change of tenancy rights which ha've been recorded in the record of rights since 1955-56 cannot be done in the manner it has been

so done in the present case. Simply because the name of one of the plaintiff has been recorded in Ex. D-1, it will not amount to his consent which

presence has been disputed very firmly in the present litigation. There is absolutely no statement of Garibu or other recorded tenants to accept the

occupation of Tulsa Singh on the suit land on October 29, 1975.

24. Reference can safely be made at this stage to clause 9.8, page 197 of the Himachal Pradesh Land Records Manual which deals with the

change of entry in Khasra Girdwari. For the sake of convenience this clause is reproduced hereunder :

The crops will be entered in the Khasra girdwari, as the inspection proceeds, in the column provided for the purpose. The change in rights, rents

and possession will be noted in the appropriate column in pencil. And, where the boundaries or area of a field have changed in such a manner as to

require a correction of the field map, the patwari will make a rough measurement, sufficient for the crop entries. All changes in rights, rents and

possession shall be recorded by the patwari in pencil and by putting a cross in pencil in columns 12, 16, 20, 24 and 28 of Khasra girdawari in

accordance with Government instructions issued vide letter No. 10-5/73-II, dated 4-9-80. As per these instructions, the patwari will give

information of such changes to the Tehsildar/Naib-Tehsildar as the case may be. The Tehsildar/Naib-Tehsildar will inquire and give reasonable

opportunity of being heard to the parties. The inquiry should be completed within 3 months and the entries will be made in Khasra girdwari

according to the orders passed by the Revenue officers after entering in his diary.

25. The aforesaid procedure has not been followed in the present case while changing the entry in favour of the defendant-appellant after deleting

the name of the plaintiffs who have been recorded as tenants since 1955-56. There appears to be some motive to effect such a change in the year

1975-1976 as by that time the tenancy rights had acquired much value in view of the Land Reforms Legislation coming in favour of the tenants.

Had there been any inquiry as envisaged in the aforesaid instructions, the present plaintiffs could have been associated in that inquiry and the

change if any could have been effected after giving them reasonable opportunity of being heard. In this view of the matter also the change in Khasra

girdawari of the tenancy rights in favour of the defendant could not legally create any tenancy rights in favour of defendant-appellant especially

when the change of girdawari in his name depicting him as tenant was illegal, unsustainable and against the mandatory instructions issued by the

Government in this behalf. Otherwise also the tenancy rights in favour of a person cannot be taken away, and cannot be created in favour of other

person in the manner it has been so done in the present case. It requires some legal procedure to be followed which in present case has not at all

been complied with.

26. It has been contended on behalf of the appellant that the Act came into force in February, 1974 and Rules along with Section 104 of the Act

came into force on October 3, 1975 and as in October, 1975, that is, on October 29, 1975 as per Ex.D-1 the defendant-appellant had been

found at the spot as tenant of the suit land, he automatically became the owner of the suit land. I, think such a right would not be available to the

defendant-appellant. As per report Ex.D-1 he was found to be in occupation on October 29, 1975 which change in the entry as discussed above

has been found to be illegal and inoperative under the law. That being so, this argument does not help the case of the defendant-appellant on any

score whatsoever.

27. It may be pointed out here that the date of this Ex. D-1 and that of applicability of Section 104 and the Rules framed under the Act would be

very much relevant. The relevant provision came into force on October 3, 1975 and the report in Roznamcha for the change was recorded on

October 29, 1975. Likelihood of this change having been thought of after the commencement of the relevant provision of the law could not be

ruled out. All these circumstances, definitely go against the case of the defendant-appellant submitted before this Court.

28. The parties have examined witnesses also and they have tried to support respective case of the parties. However, DW-6 Amar Nath, Field

Kanungo, has been produced in order to prove Ex. D-1. This witness stated that there was no application pending before him preferred by

defendant for the correction of Girdawari. According to him, girdawari was done on the basis of spot inspection. He admitted that statement of

Garibu was not recorded and Balkrishan other plaintiff was minor at that time. The version given by the witnesses will not in any way improve the

documents referred to above. Neither of the party examined the landlord. Any way factual position reflected from the documents as well as from

the oral evidence established that plaintiffs were in occupation of the suit land as tenant since 1955-56 and the name of the defendant-appellant

was wrongly substituted in their place in the year 1975-76 which correction has been rightly held to be illegal by the two Courts below and those

findings are maintained.

29. The appellant has submitted an application under O. 41, R. 27 of the CPC for seeking permission to adduce additional evidence. The

proposed additional evidence was copy of Jamabandi for the year 1968-69 and copy of treasury challan on the basis of which appellant had

deposited a sum of Rs. 686.40 paise on April 12, 1983 as compensation to be paid to the owners for the grant of proprietary rights in his favour.

It has been contended that copy of Jamabandi for the year 1968-69 prepared after consolidation, recorded owners to be in actual possession of

the suit land. The said copy has not been filed with the application before this Court though filed before lower Appellate Court. Any way, the fact

remains that even if the owners were recorded in the year 1968-69, in occupation of the suit land, that will not in any way affect the plaintiff's case

inasmuch as the plaintiff's simple case has been that change in the year 1975-76 in girdawari was illegal and unsustainable being against law.

Moreover, even if whatever has been alleged by the defendant-appellant in this application, it will not at all help his case as according to his

pleadings he has been in occupation of the suit land as tenant since 1968 which fact cannot be ascertained from the proposed entries alleged to

have been made during consolidation in the year 1968-69. In so far as tendering of challan is concerned, this fact is not disputed at all inasmuch as

it has come in evidence that proprietary rights have been granted in favour of the defendant-appellant on the basis of the changed entry in Khasra

girdawari and subsequent entries recorded on the basis of the same. In case this change of entry is avoided, the following entries thereafter loses

legal significance in so far as the defendant-appellant's case is concerned. Thus, this application preferred under Order 41, Rule 27 of the CPC

does not carry any legal weight and is accordingly disallowed.

30. In view of the foregoing reasons, there is absolutely no merit in the present appeal and the same is dismissed with costs. The judgment and

decree passed by the two courts below are maintained.