

Pinja Vs. Hoshiara

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Court : Himachal Pradesh

Decided On : Apr-29-1971

Reported in : AIR1971HP21

Judge : D.B. Lal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 9; ;Tenancy Laws; ;[Punjab Tenancy Act, 1887](#) - Section 14

Appeal No. : Second Appeal No. 52 of 1968

Appellant : Pinja

Respondent : Hoshiara

Advocate for Pet/Ap. : P.N. Nag, Adv.

Disposition : Appeal dismissed

Judgement :

D.B. Lal, J.

1. This second appeal has been directed against the decision dated 8th December, 1967 of the District Judge, Kansra, in a suit for recovery of Rs. 500/- as damages for standing crop cut and appropriated by the defendants, whereby confirming the decree of the Senior Sub-Judge who awarded Rs. 223.13 for such

crop, he has dismissed the appeal.

2. Hoshiara-plaintiff filed the suit and the allegations were, that the land measuring 8 Kanals, 7 Marias of Khasra No. 142, situate in Tika and mauza Balehar, Tehsil Kangra, belongs to him, and that he had mortgaged the said land in favour of Pinja and two others--defendants in the case--for a sum of Rs. 725/-. On 29-4-1964 Hoshiara filed an application before the Collector for the redemption of the mortgage. The Collector made his order of redemption on 8-7-1964 and since khariff crop of 1964 was standing on the land which, according to the Collector was wrongly grown by the defendants, he awarded Rs. 100/- as compensation for this crop to the defendants along with the amount recoverable for the mortgage debt. On 14-7-1964 the warrant for delivery of possession was issued and on 17-8-1964 actual possession was delivered to the plaintiff by the Field Kanungo who submitted his report to that effect. On 18-9-1964 the Collector made the order that actual possession was delivered to the plaintiff and in this manner, the proceedings came to an end. However, during the course of these proceedings and after the redemption order of the Collector, the defendants Pinja and others had filed a civil suit questioning the validity of the redemption decree, but this civil suit was also dismissed and the redemption order was held valid. According to the plaintiff, on 8th and 9th October, 1964 the defendants forcibly entered the field and cut and appropriated the standing crop.

3. The defendants contested, that they were tenants in the land and as such they had a right to remain in the possession even after the redemption order. They alleged that actual delivery of possession was not given and that the crop having been grown by them belonged to them and they cut and appropriated it as of right. It was also urged that the amount claimed was excessive. The defendants further contended that the Civil Court had no jurisdiction in the matter.

4. The learned Senior-Sub-Judge came to the findings, that actual possession was delivered to the plaintiff as a result of the redemption order. He further found that the defendants were not tenants of the disputed land. They had rather entered the land forcibly and cut and appropriated the crop. However, he found that the actual damage suffered by the plaintiff should not exceed Rs. 223.13 and so he granted

the decree of that amount to the plaintiff.

5. The defendants came in first appeal before the District Judge, Kangra, and e agreeing with the findings of the learned Senior Sub-Judge, dismissed the appeal. The defendants have now come up in this second appeal.

6. It is abundantly clear that both the Courts below have given certain findings of facts which cannot be disturbed in second appeal. It has been held that actual possession was delivered to the plaintiff and the redemption order was complied with. It has further been held that the defendants were not tenants of the land and that they had entered the fields forcibly and had cut and appropriated the crop for which Rupees 100/- was previously awarded as compensation to them. The Courts below also found that the correct damage which can be awarded to the plaintiff is Rs. 223.13 for which the decree was passed. Based on these findings, however, the learned counsel for the appellant contended, that the suit was not cognizable in the Civil Court, being covered under Section 14 of the Punjab Tenancy Act. This was rather the only point of contention raised in appeal. Section 14 of the Act reads as below:--

'Section 14:---Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or, if rent was not payable in the year, at such rate as the Court may determine to be fair and equitable.'

7. It is manifest, this section is intended to award payment to the landlord for use and occupation of the land occupied without his consent. The person who has to make the payment should be in possession of the land and his occupation has to start and continue without the consent of the landlord. Because no rent can be stated to have been fixed between him and the landlord, the legislature wanted him to pay for use and occupation at the rate of rent payable in the preceding agricultural year for that land, or, if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable. In order to attract this provision, it is rather essential that the person should be in possession of the land which signifies occupation for some period, of however short duration it may be. In the instant case, the defendants never got possession of the land so that they

could be made liable for rent at a rate specified in Section 14 of the Act. As the facts proved indicate, they just entered the land for the specific purpose of cutting the crop and after appropriating the same, they made good their exit and had no concern with the land thereafter. Theirs was a rather an isolated act of appropriation of crop. They cannot be considered to have gone into the possession of the land without the consent of the landlord.

8. It is, therefore, clear that Section 14 of the Act was never attracted and the Civil Court had jurisdiction to entertain the suit. It was a money-suit for damages in respect of crop belonging to the plaintiff and cut and appropriated by the defendants.

9. I, therefore, do not find any sufficient grounds to interfere with the decisions of the Courts below. The appeal is dismissed with costs to the Respondent No 1.

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