

ishwar Singh and ors. Vs. Sawaru Singh and ors.

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Court : Himachal Pradesh

Decided On : Aug-23-1984

Reported in : AIR1986HP17

Judge : P.D. Desai, C.J. and; V.P. Gupta, J.

Acts : [Transfer of Property Act, 1882](#) - Section 111; ;[Punjab Tenancy Act, 1887](#) - Sections 77, 100 and 100(3); ;[Punjab Security of Land Tenures Act, 1953](#) - Section 9

Appeal No. : L.P.A. No. 15 of 1971

Appellant : ishwar Singh and ors.

Respondent : Sawaru Singh and ors.

Advocate for Def. : Chhabil Dass, Adv.

Advocate for Pet/Ap. : P. Malhotra, Adv.

Disposition : Appeal dismissed

Judgement :

V.P. Gupta, J.

1. The plaintiffs (now appellants) filed a suit for possession of 10 kanals-and 5 marlas of land (detailed in the plaint) situate in village Majra, Tehsil Una on the

allegations that land measuring 27 kanals and 15 marlas bearing Khasra Nos. 325 and 399 of jamabandi for the year 1882-83 was in the occupancy tenancy of one Labha (predecessor in interest of the plaintiffs). Labha co-opted Jodh Singh (predecessor in interest of the defendants) as a non-occupancy tenant for cultivation purposes. Jodh Singh continued cultivating the land as a non-occupancy tenant. Subsequently his successors in interest/heirs were cultivating the land as non-occupancy tenants and they were assigned separate khasra numbers for cultivation. The defendants continued cultivating the land in dispute as non-occupancy tenants under the plaintiffs. Consolidation took place in the village and during consolidation the defendants got some changes effected in the revenue records with the connivance of the patwari. The defendants are denying the title and ownership of the plaintiffs. Due to the denial the relationship between the parties as landlords and tenants has come to an end and the possession of the defendants on the disputed land is illegal and unauthorised. The plaintiffs have become owners of the disputed land by virtue of the provisions of the Punjab Act No. 8 of 1953. The suit was filed in the Court of Sub Judge, Una on 21-5-1964.

2. The defendants (now respondents) denied the allegations of the plaintiff and alleged that Labha had gifted the disputed land along with other land to Jodh Singh. Labha and Jodh Singh were relations. Jodh Singh and his successors including the defendants remained in possession of the land as non-occupancy tenants till date. If the plaintiffs possessed any rights in the land then the same had come to an end because of the recent legislation. It is alleged that a partition took place in 1893-94 in which Khasra Nos. 325 and 399 were allotted to Jodh Singh, Jodh Singh and his successors continued in possession of the land after partition as occupancy tenants and the land revenue was also paid by the defendants. The consolidation proceedings have not affected the interests of the defendants and this Court has no jurisdiction to order the eviction of the defendants. The plaintiffs are estopped from filing the suit and the suit is not maintainable.

3. On the pleadings of the parties, the following issues were framed on 16-11-1964:-

1. Whether the defendants 1 to 4 ancestors entered the land, as tenants at will?

2. If issue No. 1 is not proved, whether the suit is within time?

3. Whether Labha gifted the land in suit to Jodh Singh?

4. Relief.

4. The Sub Judge Una vide his judgment and decree dated 20-7-1965 decided issues Nos. 1 and 2 in plaintiffs' favour and issue No. 3 against the defendants. He further found that as the defendants had denied the title of the plaintiffs, therefore, they had no right to retain the possession of the disputed land as tenants and could be evicted by a civil Court. As a result of these findings he decreed the plaintiffs' suit with costs.

5. Feeling aggrieved from this judgment and decree the defendants filed an appeal in the Court of District Judge, Dharamsala.

Before the learned District Judge it was contended that defendants were the owners of the disputed land and in the alternative it was contended that they were tenants at will and could not be evicted by a civil Court. The learned District Judge repelled both the contentions. The defendants were not found to be the owners of the disputed land. It was held that the defendants were the tenants of the disputed land and a relationship of landlord and tenant existed between the parties. The learned District Judge, however, found that the defendants had disclaimed the title of the plaintiffs, therefore, under Section 111(g) of the Transfer of Property Act they had forfeited their rights of tenancy and could be dispossessed by a civil Court. With these findings the appeal of the defendants was dismissed on 10-7-1968.

6. Dissatisfied with these judgments and decrees the defendants preferred a second appeal (R.S.A. No. 94 of 1968) in the High Court. A learned single Judge of this Court affirmed the findings of the learned District Judge holding that the defendants were not the owners of the disputed land by gift or partition. The learned single Judge, however, held that the defendants had not disclaimed the title of the plaintiffs in clear and unequivocal language and if there was any disclaimer then it was in the suit itself. He gave a finding that the defendants being

non-occupancy tenants and having not disclaimed the title of the landlords could not be evicted from the disputed land and the forfeiture clause of Section 111(g) of Transfer of Property Act was not applicable. As a result of these findings it was held that the defendants being non-occupancy tenants on the land could only be evicted by a revenue Court. The appeal of the defendants was allowed on 24-5-1971 and the judgments and decrees of the learned District Judge and the Sub Judge were set aside.

7. The plaintiffs being dissatisfied with the judgment of the learned single Judge have now filed this Letters Patent Appeal.

8. The learned counsel for the appellants contended that the defendants had disclaimed/denied the title of the plaintiffs and have thus forfeited their rights of tenancy. She contended that the plaintiffs' title was denied in the written statement and also prior to the filing of the suit. In support of her contention she relied on AIR 1965 SC 1923, (Raja Mahomed Amir Ahmad Khan v. Municipal Board of Sitapur). It was further contended that the civil Court had jurisdiction to entertain this suit and, at any rate, the learned single Judge should have validated the proceedings under Section 100 of the Punjab Tenancy Act.

9. The learned counsel for the defendants supported the judgment of the learned single Judge and contended that there were concurrent findings regarding the relationship of landlord and tenant between the parties and in these circumstances, the learned single Judge was justified in holding that the proper remedy of the plaintiffs was under Section 77 of the Punjab Tenancy Act. It was contended that the defendants had nowhere denied the title of the plaintiffs. The defendants were in fact claiming themselves to be the tenants of the disputed property. There was no denial of title prior to the institution of the suit or even in the written statement. It was further contended that Section 100 of the Punjab Tenancy Act was not applicable to the facts and circumstances of the present case.

10. We have considered the contentions of the learned counsel for the parties and have also gone through the records of the case.

11. After appreciation of the evidence, all the Courts held that the defendants and their ancestors were holding the disputed land as tenants at will and relationship of landlord and tenant existed between the parties. This concurrent finding of fact cannot be lightly interfered at this stage and the learned counsel for the appellants also did not challenge this finding.

12. It is not disputed that the principles of Section 111(g) of the Transfer of Property Act can be made applicable in agricultural leases also. According to the appellants' counsel, the defendants have denied/disclaimed the plaintiffs' title prior to the institution of the suit and also in the written statement.

13. In para 3 of the plaint the plaintiffs state : --

'Labha co-opted Jodh Singh as non-occupancy tenant for cultivation.....aforesaid manner continued to cultivate the land as non-occupancy tenant..... Khasra Nos, 828/325, 816/399 remained with Jodh Singh as non-occupancy tenant..... After that only Tek Singh remained as non-occupancy tenant After Tek Singh defendants Nos. 1 to 4 continued to be non-occupancy tenants.....'

14. In reply to para 3 of the plaint, the defendants state in their written statement:
--

(a) Labha, ancestor of the plaintiffs gifted the land in dispute along with other land in favour of Jodh Singh, ancestor of defendants who were relations.

(b) Since then Jodh Singh, and after him his successors continued to be non-occupancy tenants till today.

(c) If the plaintiffs possessed any right in the land in dispute, the same came to an end because of the recent legislation.

(d) In the year 1883-84 on account of partition between the ancestors of parties, Khasra Nos. 325 and 399 were allotted to the share of Jodh Singh.

(e) Since then Jodh Singh and his successors continued to be in possession as occupancy tenants.

(f) Since then the land revenue of the land is being paid by the defendants.

(g) Rest of the para is wrong.

15. In para 5 of the plaint the plaintiffs state that after consolidation the defendants Nos. 1 to 4 have been settled as non-occupancy tenants. The defendants in the written statement do not deny this para.

16. In para 6 of the plaint the plaintiffs state : --

'.....for the last one year they have been taking advantage of those entries and have ventured to deny the relationship of landlord and the tenant between them and plaintiff and defendants Nos. 5 to 11 as landlord and defendants Nos. 1 to 4 have denied their status as tenants and have also denied the ownership of the plaintiff and defendants Nos. 5 to 11. This position has been accepted by defendants Nos. 5 to 11. Therefore, the relationship of the landlord and non-occupancy tenant has been denied for the last one year and, therefore, the possession of defendants Nos. 1 to 4 has become illegal. They have now no right to possess the land and, therefore, the plaintiffs and defendants Nos. 5 to 11 are entitled to the possession of the land.'

The defendants have denied this para and they state that 'these averments are absolutely wrong and the reply has been given in para 3 above. The proceedings of consolidation have not affected the interests of the present defendants.'

17. Similarly in para 8, the defendants state :

'The plaintiffs are not entitled to get possession of the land nor the Court has jurisdiction to order the eviction of the defendants.'

18. A perusal of the pleadings shows that the defendants were all along asserting their rights of tenancy and were not denying the plaintiffs' ownership or title to the disputed land. They only asserted that if the plaintiffs possessed any right in the land in dispute then the same came to an end because of the recent legislation, By using this language in the written statement it cannot be inferred that the defendants have disclaimed the title of the plaintiffs. No person is debarred from

claiming any rights if such rights are available to him under any legislation and to claim any rights under a legislation cannot amount to a denial of the plaintiffs' rights. Thus, the learned single Judge was justified in holding that the defendants have not disclaimed the title of the plaintiffs in clear and unequivocal language in the written statement. There is no evidence on record to prove that the defendants had disclaimed the plaintiffs' title at any time prior to the institution of the suit. In AIR 1965 SC 1923 (supra) their Lordships have held that the disclaimer or renunciation should be in clear and unequivocal terms whether the same is in the pleadings or in other document. The facts were that the appellant was claiming to have a permanent and heritable interest in the land and he further claimed that the land belonged to him and he was the owner of it. In the facts and circumstances of the case, even these statements were not held to be sufficient so as to amount to a denial of landlord's title and the forfeiture of tenancy was not permitted by their Lordships. This judgment does not help the appellants.

19. Section 100 of the Punjab Tenancy Act cannot be made applicable in the facts and circumstances of the present case. The relevant portion of S. 100 of the Punjab Tenancy Act reads as follows : --

' 100.(1) to (2) xxxxx'

(3) If it appears to the High Court otherwise than on submission of a record under Sub-section (1), that a civil Court under its control has determined a suit of a class mentioned in Section 77 which under the provisions of that section should have been heard and determined by a Revenue Court, the High Court may pass any order which it might have passed if the, record had been submitted to it under that sub-section.

(4) to (6) xxxx'

20. In the present case the civil Court could decide as to whether there was a relationship of landlord and tenant between the parties or not. After having decided that there was a relationship of landlord and tenant, the civil Court had no jurisdiction to pass any orders for ejectment of a tenant. Due to the enforcement of the [Punjab Security of Land Tenures Act, 1953](#), even the tenants at will cannot be

ejected except on the grounds mentioned in that Act. No such ground was alleged and there could not be any determination of the rights of the parties after hearing them. The provisions of Section 100(3) could only apply in a case where the suit of a class mentioned in Section 77 had been determined by a civil Court which should have been heard and decided by a revenue Court. In these circumstances Section 100(3) of the Punjab Tenancy Act was not applicable. The only relief which the civil Court could give to the plaintiffs was the one which has been given to the plaintiffs by the learned single Judge.

21. No other point was urged.

22. As a result of the above findings, the present appeal is dismissed.

P.D. Desai, C.J.

I agree.

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