

Beant Singh Vs. Natha Singh

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Court : Himachal Pradesh

Decided On : Nov-16-1964

Reported in : AIR1966HP48

Judge : Om Parkash, C.J.

Acts : [Evidence Act, 1872](#) - Sections 35 and 114; ;[Code of Civil Procedure \(CPC\)](#) , [1908](#) - Section 115

Appeal No. : Civil Revn. No. 25 of 1964

Appellant : Beant Singh

Respondent : Natha Singh

Advocate for Pet/Ap. : Amrit Singh Saha, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Om Parkash, J.

1. This revision-petition is directed against a decree of the learned District Judge, Sirmur, whereby, the suit of the petitioner, for the recovery of Rs. 326.12 P, as mesne profits of land, measuring 12 bighas and 15 biswas, was dismissed. The

suit was founded on the allegations that the land was owned and possessed by the petitioner, that he had prepared the land for sowing Rabbi crop for 1961, but that the respondent had taken forcible possession of, and had sown the Rabbi crop for 1961, in, the land and had also, illegally harvested that crop

2. The respondent denied that he had taken forcible possession of the land or had illegally harvested Rabbi crop for 1961. His plea was that the land was evacuee property and had been allotted to Udho Dass, who had leased out the land to the respondent, and that he had been cultivating the land, as a tenant, upto Rabbi 1961. The respondent, further, pleaded that the land was allotted to the petitioner as a result of the scheme of consolidation of holdings, and possession was delivered to him in the month of June, 1961, prior to which date the petitioner had nothing to do with the land. The respondent had, also, raised a preliminary objection to the effect that as relationship of landlord and tenant existed between the parties, the suit was triable by a revenue Court only

3. The learned Senior Subordinate Judge, Sirmur, who had tried the suit, held that the respondent had not taken forcible possession of the land but was its tenant, upto Rabbi 1961 and was therefore, entitled to harvest that crop. He, further held that the land was allotted to the petitioner as a result of the scheme of consolidation of holdings and that the petitioner was put into possession in June, 1961. But instead of dismissing the suit of the petitioner on the basis of the aforesaid findings, the learned Senior Subordinate Judge ordered the return of the plaint to the petitioner for presentation in the proper Court, as in his opinion, relationship of Landlord and tenant existed between the parties and the suit was triable by a revenue Court, only.

4. Against the aforesaid order of the learned Senior Subordinate Judge, the petitioner filed an appeal in the Court of the learned District Judge. Sirmur. The learned District Judge agreed with the Senior Subordinate Judge that the respondent had not taken forcible possession of the land, but was its tenant upto Rabbi 1961 and was entitled to harvest that crop. But he did not agree with the Senior Subordinate Judge that relationship of landlord and tenant existed between the parties. On the other hand, his view was that as the respondent had

relinquished possession of the land, after the petitioner had been put in possession in June 1961, relationship of landlord and tenant could not come into existence between the parties and the suit, as framed, was triable by a Civil Court. As a result of his finding that the respondent was in lawful possession of the land, as a tenant, upto Rabi 1961 and was entitled to sow and harvest that crop, the learned District Judge dismissed the suit of the petitioner who has come up in revision.

5. The only contention, urged in the revision-petition, was that the learned District Judge had acted, in the exercise of his jurisdiction, with material irregularity, in coming to the conclusion that the respondent had not taken forcible possession of the land and was in possession as a tenant upto Rabi 1961, inasmuch as he had excluded from consideration the entries in the Khasra Girdawari, showing the respondent in forcible possession of the land, on the erroneous ground that, as the Patwari who had prepared the Khasra Girdawari, was not produced, the Khasra Girdawari was inadmissible in evidence. It is, no doubt, true that, the view of the learned District Judge that the entries in the Khasra Girdawari could not be read as evidence, unless the Patwari, who had prepared it was produced, is erroneous. The Khasra Girdawari is a public document, within the meaning of section 35, Evidence Act and entries, contained therein, may be properly proved by the production of a certified copy thereof, vide *Mohammed Din v. Fateh Din*. AIR 1934 Lah 698. To make the entries admissible, it is not obligatory to produce the Patwari who had prepared the Khasra Girdawari. The entries of the Khasra Girdawari, filed in the instant case, were admissible, though the Patwari, making those entries was not produced. The respondent's possession of the land was recorded as forcible for Rabi, 1961, in the Khasra Girdawari.

It is well settled that the entries in the Khasra Girdawari do not carry any presumption of truth under Section 45, Himachal Pradesh Land Revenue Act, as the Khasra Girdawari is neither a record-of-rights nor an annual record. Such entries merely constitute a piece of evidence but not a presumptive piece of evidence. The entries in the Khasra Girdawari, in the present case, stood contradicted and falsified, by the evidence, adduced by the respondent Kishori Lal D. W 2, who was Inspector, Consolidation, and had delivered possession of the

land allotted to the petitioner, categorically, stated, that the petitioner was put into possession of the land, in suit, on the 5th June, 1961 and that prior to that date, the respondent was in possession of the land. Udho Dass D. W. 3 stated that the land, in suit, which was evacuee property, was, at first, allotted to his son-in-law, Kesar Chand, and that as the latter was in service he was looking after the land and had leased it out to the respondent. Udho Dass, further, stated that the respondent had been in possession of the land as a tenant and had been paying rent to him.

The evidence of Kishori Lal D. W. 2 and Udho Dass D. W 3, who were disinterested witnesses, clearly established that the respondent was in possession of the land as a tenant upto Rabbi 1901 and had not taken forcible possession. This evidence falsified the entries in the Khasra Girdawari. showing the respondent as in forcible possession of the land in Rabbi 1961. It is significant to note that the petitioner did not produce any evidence, excepting the aforesaid entries from the Khasra Girdawari, to prove that the respondent had taken forcible possession. Further, there is nothing on the record to show that the petitioner was in possession of the land, in suit, prior to 5th June, 1961

6. It is clear, from the above discussion, that though the learned District Judge erred in excluding, from evidence, the entries, from the Khasra Girdawari, yet this excluding did not affect the case on merits. His finding that the respondent was in lawful possession of the land, as a tenant, upto Rabbi, 1961 and was entitled to harvest that crop is supported, by evidence, on record The learned District Judge therefore, cannot be said to have acted, in the exercise of his jurisdiction, with any material irregularity, in coming to the conclusion that the respondent was a tenant of the land upto Rabbi 1961. Further, as was observed in *Lalla Ram v. Naresh Chand*, AIR 1952 Him Pra and Bilaspur 28:

'The arriving at a conclusion or decision is a mental operation and the Court cannot be said to be acting in so coming to a conclusion or decision on a question of law or of fact; and so far as arriving at a conclusion or decision is concerned, whether the lower appellate Court decides the questions rightly or wrongly it has jurisdiction to do so and even if it decides wrongly it cannot be said to have acted

with material irregularity in the exercise of its jurisdiction. '

So, even if it be assumed that the learned District Judge decided wrongly that the respondent was in lawful possession of the land in Rabbi, 1961, even then he cannot be said to have acted with material irregularity in the exercise of his jurisdiction.

7. It is to be noted that both the Courts below have held that the respondent was in lawful possession of the land, in suit, as a tenant, upto Rabbi 1961, and was entitled to harvest that crop Sitting as a Court of Revision, this Court will not be justified in going behind the aforesaid concurrent finding of fact, vide Mohan Singh v. Deota Ji Bharmol, AIR 1966 Him Pra 22

8. For the reasons, stated above, the revision-petition is dismissed with costs

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