

Paras Ram and ors. Vs. Jai Ram and ors.

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Court : Himachal Pradesh

Decided On : Apr-04-2006

Reported in : 2006(1)ShimLC391

Judge : Surjit Singh, J.

Acts : Himachal Pradesh Restitution of Mortgaged Lands Act, 1976 - Sections 3(5) and 4; ;[Punjab Tenancy Act, 1887](#) - Section 4(5); ;Punjab Security of Land Tenures Act; ;Himachal Pradesh Tenancy and Land Reforms Act, 1972 - Sections 2(17) and 104(4); ;Transfer of Property Act; ;Himachal Pradesh Land Revenue Act - Section 4(9); ;Punjab Revenue Act - Section 3(2); ;Punjab Tenancy Act; ;Himachal Pradesh Tenancy and Land Reforms Rules - Rule 29

Appeal No. : R.S.A. No. 376 of 1994

Appellant : Paras Ram and ors.

Respondent : Jai Ram and ors.

Advocate for Def. : Ajay Sharma, Adv., for the Respondent No. 1

Advocate for Pet/Ap. : G.D. Verma, Sr. Adv. and; B.C. Verma, Adv.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. The present appeal was admitted, vide order dated 14.11.1994, on one specific question of law and also on such (unspecified) questions of law, which the appellants might urge at the time of final hearing.

2. Facts relevant for the disposal of the appeal may be noticed. Respondent Jai Ram (herein after called 'plaintiff') filed a suit against the present appellant Ghan Shyam and predecessors of the other appellants seeking a declaration that he was in possession of 0-017-97 hectares of land, bearing Khasra Nos. 878 and 881, situate in Mauza Sungal, Tehsil Palampur, in the capacity of a tenant and also for injunction restraining the appellants-defendants from causing any interference in his right to enjoy the said property, as a tenant. Respondent No. 2 Mast Ram was also impleaded as one of the defendants. Respondents Oma Devi and Ashok Kumar were impleaded as proforma-defendants.

3. Cause of action that was disclosed in the plaint was like this. Predecessor of the appellants-defendants had created a mortgage in respect of the suit property in favour of respondent Mast Ram, sometime in the year 1957. In the year 1970, respondent Mast Ram inducted plaintiff Jai Ram and late Sant Ram, the predecessor of proforma-respondents Oma Devi and Ashok Kumar, as tenants qua the suit property. In the year 1985, the appellants-defendants made an application, under Section 4 of the H.P. Restitution of Mortgaged Lands Act, 1976, against Mast Ram and obtained an order of redemption of mortgage on payment of a sum of Rs. 400/- due on account of the balance mortgage debt. On the strength of the said order, the appellants-defendants tried to interfere in the possession of the plaintiff and proforma-defendants, who held the land in the capacity of tenants.

4. Appellants-defendants contested the suit. They pleaded that the plaintiff was estopped to sue by his acts, deeds and conduct, the suit was not maintainable, the plaintiff had no locus standi nor did he have in any cause of action and that he having been inducted as a tenant by the mortgagee and mortgage having been redeemed, he had no right to remain in possession. It was stated that petition for delivery of the possession by way of execution of order of redemption of mortgage

had already been filed before the Collector and the defendants had the right to take the possession by executing the said order. Further, it was stated that the order of the Collector regarding redemption of mortgage having not been challenged, the suit was liable to be dismissed.

5. Plaintiff filed replication in which he pleaded that he had filed an appeal challenging the order of the Collector and the Commissioner, in his capacity as the Appellate Authority, had stayed the operation of the order of the Collector and, hence, the said order had not been specifically challenged.

6. Trial Court framed various issues and tried the suit. At the end of the trial, the Court gave the finding that the plaintiff was not in possession and that he was estopped to file the suit, the suit was not maintainable, the plaintiff had no locus standi nor any cause of action and that he, being a co-owner with the appellants-defendants, could not claim himself to be a tenant. Appeal was filed by the plaintiff-respondent Jai Ram in the Court of District Judge. The District Judge has accepted the appeal with the finding that the plaintiff having been inducted as tenant by the mortgagee with possession was entitled to remain in possession as tenant even after the redemption of mortgage, because in view of the definition of 'tenant' given in [Punjab Tenancy Act, 1887](#), which was to be read in the Punjab Security of Land Tenures Act, a tenant inducted by the usufructuary mortgagee was entitled to the same protection as that enjoyed by a tenant inducted by the owner of the land under the provisions of Tenancy Laws. In support of this view, the learned District Judge placed reliance upon a judgment of this Court in *Kirpu Ram and Ors. v. Kanshi Ram and Ors.* 1991(2) SLC 189. As a sequel to the aforesaid finding and the acceptance of the appeal, the learned District Judge decreed the suit of the plaintiff declaring him as tenant in possession of the suit property and injunction upon the appellants-defendants from interfering in plaintiff's possession.

7. Appellants-defendants formulated a number of questions and submitted them with the memorandum of appeal. They claimed that all those questions were substantial questions of law. However, as already noticed, the appeal was admitted on one specific question of law, viz. the effect of non-challenging the

order passed by the competent revenue authority and such other (unspecified) questions, which might be urged by the appellants.

8. During the course of hearing of the appeal, learned Counsel for the appellants urged that the order of the authorities, under the H.P. Restitution of Mortgaged Lands Act, 1976, having not been challenged and such order having become final, the suit was barred by Rule of res judicata. This submission he made with respect to the question on which this appeal was specifically admitted. He further submitted that the plaintiff and predecessor of the proforma-respondents had not been inducted as tenants by Mast Ram, mortgagee with possession, as an act of prudent management of mortgaged property nor could they claim the status of tenants after the redemption of mortgage, because a tenant inducted by a mortgagee is not covered by the definition of tenant given in H.P. Tenancy and Land Reforms Act and, hence, they are liable to be ejected. He also urged that plaintiff did not take the plea that he and the predecessor of the proforma-respondents had been inducted as tenants by an act of prudent management of the mortgaged property and, hence, they could not claim even the protection under the common law or the Transfer of Property Act.

9. As regards the specific question of law, on which the appeal was admitted, it may be noted at the very outset that the appellants-defendants did not implead the plaintiff as party to the petition, under Section 4 of the H.P. Restitution of Mortgaged Lands Act, 1976. Learned counsel for the appellants urged that the plaintiff was aware of the proceedings, because he appeared as a witness of the mortgagee, in the course of those proceedings and the fact is borne out from the order itself and, hence, the order binds him and operates as res judicata. The contention is without merit. It is one of the main requirements of the rule of the res judicata that the party making the plea and the party against whom the plea is made should both be party to the earlier litigation.

10. Learned counsel for the appellants then urged that the plaintiff had filed an appeal before the Commissioner, challenging the order of the Collector, under Section 4 of the H.P. Restitution of Mortgaged Lands Act, 1976, and that appeal having been decided against him by the Commissioner, the plea of res judicata

was attracted. It is true that the appellants have placed on record a copy of the order passed by the Commissioner in appeal, a reading of which shows that the appeal stands dismissed, but the fact remains that when the suit was filed the appeal was pending and the operation of the order of the Collector had been stayed by the Commissioner and so the plaintiff did not challenge the order of Collector.

11. The abovestated position apart, the order of the Collector or for that matter the order passed by the Commissioner in appeal, to the extent it orders the dispossession of the plain tiff-tenant, is without jurisdiction and, hence, the question of the present Us being hit by the principle of res judicata does not arise. The Act gives power to the Collector to dispossess a mortgagee after the redemption of the mortgage. 'Mortgage', as per definition given in Section 3(5), includes the assignee or the representative-in-interest of the mortgagee. It does not include a tenant inducted by a mortgagee. The term 'assignee', in my considered view, would not include a tenant. The dictionary meaning of the word 'assignee', according to The New Shorter Oxford English Dictionary, Thumb Index Edition, is a person (other than the heir at law) to whom a right of property is legally transferred, a person appointed to act for another; a deputy, an agent, a representative. The dictionary meaning of the word suggests that in the context of the property, the assignee should have all those rights in the property, which the assignor had and not a part of it. Therefore, in the context of Section 3(5) of the Act, the term 'assignee', when used in relation to a mortgagee, would mean a person having all those rights and liabilities, which the original mortgagee had.

12. In view of what has been stated herein above, the appeal does not succeed on the specific question of law on which it was admitted.

13. Now, I proceed to deal with the submissions of the appellants that the plaintiff is not covered by the definition of tenant, given in H.P. Tenancy and Land Reforms Act and that he is not entitled to the protection provided under the Transfer of Property Act, because of his having not pleaded that he was inducted as a tenant by way of an Act of prudent management of the property.

14. In support of his contention, that the plaintiff and the predecessor of the proforma-defendants are not covered by the definition of tenant under the H.P. Tenancy and Land Reforms Act, learned Counsel for the appellant placed reliance upon a Single Bench Judgment of this Court in Smt. Kanta Devi v. Shri Khushia 1996(2) Sim. L.C. 365. The facts of the case were that mortgagor, after having redeemed the usufructuary mortgage, brought a suit for possession against the tenant inducted by the mortgagee. The question arose, whether the tenant inducted by the mortgagee with possession was to be treated as tenant of the mortgagor after the redemption of mortgage. Distinguishing an earlier judgment by another Single Bench of this Court in Bhagat Ram and Anr. v. Asha and Ors. 1986 Sim. L.C. 291, wherein it was held that a tenant inducted by a mortgagee with possession was covered by the definition of tenant under the Punjab Security of Land Tenures Act, the learned Single Judge held that the earlier view was based on the definition of tenant, as given in Section 4(5) of the [Punjab Tenancy Act, 1887](#), and that the definition of the term 'tenant' having changed in H.P. Tenancy and Land Reforms Act, 1972, vide Section 2(17), the said judgment was of no avail. It was held that in the Punjab Tenancy Act, a tenant meant a person who held land under another person, but in Section 2(17) of the H.P. Tenancy and Land Reforms Act, 1972, a tenant means a person, who holds land under a land-owner and that the mortgagee with possession cannot be said to be a land-owner. Learned Single Judge then noticed the definition of 'land-owner', which for the purposes of H.P. Tenancy and Land Reforms Act, 1972, per Section 2(10) of the said Act, is the same as given in H.P. Land Revenue Act, in respect of the areas of old Himachal or in the Punjab Land Revenue Act, in respect of the areas merged in Himachal Pradesh, on reorganization of the erstwhile State of Punjab. Definition of 'land-owner' is the same, per Section 4(9) of the H.P. Land Revenue Act and Section 3(2) of the Punjab Revenue Act. It is reproduced below for ready reference:

4(9) 'land-owner' does not include a tenant or an assignee of land revenue but does include a person to whom a holding revenue or of a sum recoverable as such as arrear, and very other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate.

The definition is both exclusive and inclusive. It excludes a tenant or an assignee of land revenue. It includes a person to whom a holding, arrears of revenue or a sum recoverable as such arrear and every other person not mentioned in the definition, who is in possession of an estate or any share or portion thereof or in the enjoyment of any part of the profits of an estate. The definition specifically includes every person, other than those mentioned in the definition, who is in possession of an estate or any share or portion thereof. Therefore, any person, who is in possession of an estate or a share or a portion thereof, except those excluded by the definition itself, i.e. a tenant or an assignee of land revenue, falls in the definition of 'land-owner'. A mortgagee with possession would, thus, fall in the definition of a person in possession and consequently the definition of land-owner. Admittedly, this was a case of mortgagee with possession of a portion of revenue estate. It appears, that the learned Single Judge in Kanta Devi's case (supra) was having the impression that land-owner means only the owner of the land.

15. In view of what has been stated herein above, the definition of 'tenant' given in Section 2(17) of the H.P. Tenancy and Land Reforms Act substantially remains the same as in Punjab Tenancy Act, because, according to definition in the Punjab Tenancy Act, a tenant means a person who holds a land under any person and in the H.P. Tenancy and Land Reforms Act, a tenant means a person who holds land under a land-owner and ('landowner', as noticed above, includes any person in possession, except a tenant or an assignee of land revenue.

16. Another Single Bench of this Court in Kirpu Ram and Ors. v. Kanshi Ram and Ors. 1991(2) SLC 189, has held that a mortgagee with possession is covered by the definition of land-owner given in H.P. Tenancy and Land Reforms Act and the Punjab Revenue Act and so a tenant inducted by a mortgagee with possession is a tenant within the meaning of Section 2(17) of the H.P. Tenancy and Land Reforms Act.

17. The above discussion leads to an irresistible conclusion that respondent-plaintiff and the predecessor of proforma-respondents are tenants, within the meaning of Section 2(17) of the H.P. Tenancy and Land Reforms Act and, hence,

entitled to the protection and the benefits conferred by various provisions of H.P. Tenancy and Land Reforms Act. In view of the protection thrown by the Act around a tenant, respondent-plaintiff cannot be ejected from the suit property by execution of the order passed, under Section 4 of the H.P. Restitution of Mortgaged Lands Act, 1976.

18. It was also urged by the learned Counsel for the appellants that in view of the judgment rendered by this Court in Gopal Krishan v. Jagtamba Parsad and Ors. 2000(1) SLC 132, Civil Court did not have the jurisdiction to decide the question, whether the plaintiff was a tenant qua the suit property. This Court in the aforesaid judgment, relying upon the provisions of Section 104(4) of the H.P. Tenancy and Land Reforms Act and Rule 29 of the Rules framed under the said Act, has held that the Civil Court does not have the jurisdiction to decide a dispute, whether a person cultivating the land of a land-owner, is a tenant or not. For two reasons, the argument cannot be accepted. Firstly, jurisdiction of the Court had not been challenged and the plea has been taken, for the first time, in the second appeal and, secondly, Sub-section (4) of Section 104 of the H.P. tenancy and Land Reforms Act relates to a situation where a dispute arises, whether a person cultivating the land of a land-owner is a tenant or not. In the present case, as a matter of fact, there was no dispute so far as the facts are concerned. The plaintiff claimed that he and his brother Sant Ram, the predecessor of the proforma-defendants, had been inducted as tenants on the mortgaged property by the mortgagee with possession, namely Mast Ram, respondent. Appellants-defendants did not dispute this factual position. What they alleged is that the tenancy came to an end with the redemption of mortgage. The point, thus, raised by them was not in fact a dispute of the type as envisaged by Sub-section (4) of Section 104 of the H.P. Tenancy and Land Reforms Act. It was in fact a question of interpretation of the term 'tenant'.

19. In view of the abovestated position, the appeal is dismissed. Parties are left to bear their own costs.