

Roomi Vs. Situ and anr.

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Court : Himachal Pradesh

Decided On : Aug-04-2009

Judge : Rajiv Sharma, J.

Appellant : Roomi

Respondent : Situ and anr.

Disposition : Appeal dismissed

Judgement :

Rajiv Sharma, J.

1. This Regular Second Appeal has been directed against the judgment and decree dated 29.8.1998 passed by the learned Additional District Judge (1), Kangra at Dharamshala in Civil Appeal No. 44-D/97.

2. Brief facts necessary for the adjudication of this Regular Second Appeal are that the appellant-plaintiff (hereinafter referred to as 'the plaintiff' for convenience sake) filed a suit for permanent injunction restraining the respondents-defendants (hereinafter referred to as 'the defendants' for convenience sake) from interfering, changing the nature of land, raising any construction and disturbing the existing position of the Whether the reporters of Local Papers may be allowed to see the judgment? No. plaintiff over the suit land comprised in Khata No. 96, Khatauni No. 249, Khasra Nos. 539 to 543, kita 5 measuring 0-28-17 hectares situated in Up-

Mohal Lehsar, Mauza Yol, Tehsil Dharamshala, District Kangra till the partition of the same by metes and bounds. It is also averred that the suit land is jointly owned and possessed by the parties and other co-sharers and that the defendant No. 1 is owner to the extent of share and the defendants are already occupying the same in the form of their house and courtyard etc. and that the plaintiff is owner to the extent of 9/12th share and his due share works out to 0-19-19 hectares in which some of land is in the form of cultivable and the same is cultivated by the plaintiff from many years. The suit was contested by the defendants. The defendants have denied the averments made in the plaint and have further stated that the defendant No. 1 with his other two brothers, namely, Beli Ram and Masto are tenants with the plaintiff to the extent of 8th share in Khata No. 96 measuring 0-18-78 hectares, which the plaintiff purchased from the previous owner Sh. Shiv Ram son of Saudagar. They have termed the entry showing the suit land in self cultivation of the plaintiff as wrong and according to them, defendant No. 1 alongwith his brothers should have been shown as tenant to the extent of his share i.e. 0-18-78 hectares in the cultivation column. The learned Sub Judge decreed the suit on 5.5.1997. The defendants preferred an appeal before the learned Additional District Judge (1), Kangra at Dharamshala. He accepted the appeal partly. He set aside the findings of the learned trial court on issue No. 7 to the effect that defendant No. 1 and others are not the tenants under the plaintiff qua the suit land. A decree for permanent prohibitory injunction restraining the defendants from interfering, changing the nature of the land, raising any construction and disturbing the existing possession of the plaintiff over the suit land till its partition was passed in favour of the plaintiff and against the defendants. This Regular Second Appeal has been directed against the judgment and decree dated 29.8.1998. The same was admitted on the following substantial questions of law:

1. Whether learned first appellate court below erred in appreciating the provisions of law applicable, pleadings of the parties and evidence adduced by them in its true and correct perspective, thereby vitiating the impugned judgment and decree?
2. Whether in view of Section 2(5) of the Tenancy and Land Reforms Act, a brother can be held to be a tenant of his own brother?

3. Whether learned first appellate court below misread and mis-appreciated the oral and documentary evidence with specific reference to the statement of DW-1?
4. Whether learned first appellate court below erred in deciding the question of tenancy in view of Full Court Judgment Chuniya vs. Jindu of this Hon'ble Court?
3. Mr. Ajay Sharma, Advocate has strenuously argued that the learned Additional District Judge has mis-interpreted and misread the revenue entries placed on record by the parties. He then contended that the findings recorded by the learned Additional District Judge qua the tenancy are liable to be interfered with.
4. Mr. R.K. Sharma, Advocate has supported the judgment and decree passed by the learned first appellate court. I have heard the learned Counsel for the parties and perused the record carefully.
5. Since all the substantial questions of law are inter-linked and interconnected, therefore, the same are being taken up together for determination to avoid repetition of discussion of the evidence.
6. The defendants have placed and proved in evidence copy of jamabandi for the year 1966-67 (Ex. D-2). Ex. D-2 reveals Shiv Ram as co-owner of 2/3rd share of the suit land whereas 1/3rd share of the suit land has been shown in the ownership of 'Mandir'. In the column of possession Beli Ram, Nathu, Roomi (plaintiff) and Situ (defendant No. 1) all sons of Gittu have been shown as non-occupancy tenants of the suit land on payment of Galla Batai in equal shares to the extent of half share of produce of the suit land to the land owners. The entries in Ex.D-2 were not challenged by any of the parties to the suit. The defendants have also proved on record the copy of Missal Haquiat Bandobast Jadid for the year 1978-79 as Ex.D-3. Ex.D-3 depicts that settlement took place in the year 1978-79 and on completion of settlement, this document was prepared. This land corresponds to pre-settlement Khasra No. 90 which tallies with the description of the suit land given in the copy of the jamabandi for the year 1966-67. It shows that the plaintiff Roomi became the owner of 2/3rd share of the suit land in place of Shiv Ram whereas 'Mandir' has been recorded as owner of 1/3rd share out of the suit land. He has stepped into the shoes of Shiv Ram. The plaintiff has claimed

that he has purchased 2/3rd share belonging to Shiv Ram. This fact is not disputed by the defendants. However, they have claimed that defendant No. 1 alongwith Masto and Beli Ram remained in possession of the suit land as non-occupancy tenant earlier under Shiv Ram and later on under Roomi (plaintiff) qua 2/3rd share of the suit land and qua 1/3rd share belonging to the 'Mandir'. The defendants have also produced the copy of jamabandi for the year 1986-87 as Ex.D-4. Ex. D-4 shows the plaintiff as owner of 2/3rd share and Mandir as owner of 1/3rd share, whereas Sita Ram, Beli Ram, plaintiff Roomi and Masto have been recorded as non-occupancy tenants on payment of Galla Batai. From the remarks column, it is evident that as per the provisions of Section 104(3) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 vide mutation No. 493, all the four brothers were conferred with proprietary rights of 1/3rd share measuring 009-39 hectares. After the conferment of the proprietary rights, each of the non-occupancy tenant became owner to the extent of 1/12th share each in the suit land whereas the suit land remained in joint possession of all the four brothers. All the four brothers were non-occupancy tenants qua 2/3rd share belonging to Shiv Ram. The plaintiff has purchased, as noticed above, 2/3rd share of Shiv Ram and became the owner and stepped into his shoes. However, the fact remained that the said purchase by the plaintiff of 2/3rd share did not divest defendant No. 1 and his brothers Beli Ram and Masto from their rights of tenancy qua 2/3rd share of the suit land purchased by the plaintiff. The plaintiff's right of tenancy merged into larger right of ownership. The parties have also produced the copies of jamabandis for the year 1991-92 Ex. P-1 and D-5. As per this document Ex.P-1 and D-5, the plaintiff came to be recorded as owner of 9/12th share out of the suit land whereas Beli Ram, Situ (defendant No. 1) and Masto came to be recorded as owners of 1/12th share each in the suit land and the suit land has been shown in their joint possession. The plaintiff has not pleaded any relinquishment or waiver of their tenancy rights by defendant No. 1 and his brothers Beli Ram and Masto. The plaintiff has not explained how the entry of non-occupancy tenant in favour of defendant No. 1 and his brother Beli Ram and Masto came to be changed and deleted qua 2/3rd share of the suit land and owned by the plaintiff. What emerges from the above discussion of the documentary evidence is that the suit land was owned by Shiv Ram and 'Mandir'. Shiv Ram was the owner to the extent of 2/3rd

share whereas 'Mandir' was the owner to the extent of 1/3rd share. All the brothers, including plaintiff, were recorded as non-occupancy tenants on payment of Galla Batai. All the brothers acquired proprietary rights by virtue of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 qua 1/3rd share of 'Mandir' in equal shares i.e. 1/12th share each. The plaintiff had purchased 2/3rd share from Shiv Ram. All the brothers were required to be recorded in self cultivation of 1/3rd share as owners, which was acquired by them under the Himachal Pradesh Tenancy and Land Reforms Act, 1972, whereas remaining 2/3rd share after acquisition of ownership by plaintiff and all the other three brothers were required to be recorded as non-occupancy tenants under the plaintiff. All the brothers are tenants under Shiv Ram. The plaintiff has purchased the land from Sh. Shiv Ram. The defendant and his other brothers remained in possession of the suit land as tenants. In these circumstances, there is no violation of Section 2(5) of the Himachal Pradesh Land Tenancy and Land Reforms Act, 1972. The learned Additional District Judge has correctly construed and read the revenue entries while setting aside the findings recorded by the learned trial court.

7. In view of this, the findings recorded by the learned Additional District Judge are liable to be upheld. He has come to a right conclusion that defendant No. 1 and others are tenants under the plaintiff of 8/12th share i.e. 2/3rd share out of the suit land.

8. Consequently, there is no merit in the Regular Second Appeal and the same is dismissed. There will, however, be no order as to costs.