

Dilu Alias Tilu Vs. Devta Risha of Kanda

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Court : Himachal Pradesh

Decided On : Feb-28-2012

Judge : Kuldeep Singh

Appeal No. : R.S.A. No. 254 of 2002

Appellant : Dilu Alias Tilu

Respondent : Devta Risha of Kanda

Judgement :

Kuldeep Singh, J.

Oral:

1. The defendant has come in second appeal against judgment, decree dated 17.5.2002 passed by learned District Judge, Kullu, in Civil Appeal No. 5/2002, affirming judgment, decree dated 27.11.2001 passed by learned Senior Sub Judge, Kullu, in Civil Suit No.216 of 99.

2. The brief facts of the case are that respondent had filed a suit for declaration that respondent is owner in possession of the suit land, more specifically described in the plaint, as per copy of jamabandi for the year 1996-97. It has been alleged that respondent is owner in possession of the suit land. The revenue entries showing the appellant as tenant in possession of the suit land are wrong and contrary to factual position on spot and are not binding on the respondent.

The appellant has no right, title or interest over the suit land. It has been alleged that when the jamabandi for the year 1996-97 was prepared, the appellant without notice, knowledge and behind the back of respondent and in connivance with the revenue officials got his name recorded as tenant under the respondent over the suit land. The respondent never inducted the appellant as tenant nor the appellant is in possession of the suit land. The rapat No.299 dated 26.5.1997 is wrong, illegal and respondent is not bound by such rapat. The consequential relief of permanent injunction was also prayed.

3. The suit was contested by appellant by filing written statement. It has been pleaded that the appellant has not approached the Court with clean hands, material facts have been suppressed and therefore, the respondent is not entitled to the discretionary relief. The suit is not maintainable; the respondent is estopped from filing the suit. On merits, appellant submitted that he is owner in possession of the suit land. It has been alleged that father of the appellant was inducted as tenant on the suit land in lieu of service rendered by him. The appellant after the death of his father is in possession of the suit land. In the year 1997 the revenue officials visited the spot and necessary correction was made in the revenue record, the report to this effect is mentioned in the rapat roznamcha dated 26.5.1997. The appellant has become owner of the suit land by operation of law. The replication was filed.

4. On the pleadings of the parties, the following issues were framed:-

- (i) Whether the plaintiff is owner in possession of suit land as alleged? OPP.
- (ii) Whether the revenue entries showing the defendant as tenant in possession of the suit land are not correct as alleged? OPP
- (iii) Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
- (iv) Whether the suit is not maintainable as alleged? OPD
- (v) Whether the plaintiff is estopped from filing the suit by its act and conduct? OPD.

(vi) Relief.

The issues No.1 to 3 were answered in affirmative and issues No.4 and 5 were held in negative. The learned Senior Sub Judge decreed the suit on 27.11.2001. The appeal filed by appellant was dismissed by learned District Judge on 17.5.2002, hence second appeal which has been admitted on following substantial questions of law:-

“Whether in the facts of the present case, the civil court had any jurisdiction to decide the matter?”

5. I have heard the learned counsel for the parties and have also gone through the record. The learned counsel for the appellant has submitted that there is a dispute of tenancy over the suit land between the parties and therefore, civil court has no jurisdiction to try the suit. The learned counsel for the respondent has submitted that question of conferment of propriety rights under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972 (for short Act) is not involved in the present case and therefore, civil court has jurisdiction to try the suit. He has relied Shankar vs. Smt. Rukmani and others 2003 (1) SLC 300 in support of his contention.

6. The perusal of the plaint indicates that in the plaint there is no pleading with respect to conferment of proprietary rights of the suit land in favour of the appellant nor any order conferring proprietary rights of the suit land in favour of the appellant has been challenged. The appellant also in the written statement has not pleaded that proprietary rights were conferred in his favour or in favour of his father under Section 104 of the Act. In fact in the written statement no specific plea regarding the jurisdiction of the civil court has been taken nor specific issue regarding the jurisdiction of the civil court was framed or pressed by the appellant when the matter was in the trial Court. It appears the appellant raised the question of jurisdiction of the civil court only in the lower appellate court.

7. The learned counsel for the appellant in support of his submission that civil court has no jurisdiction has referred Chuhniya Devi vs. Jindu Ram and others 1991 (1) SLC 223. The two questions in Chuhniya Devi supra were whether the civil court has jurisdiction in respect of an order;

- (a) made by the competent authority under the H.P. Land Revenue Act, 1954, and
- (b) of conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972.

The full Bench answered both the questions as follows:-

(a) that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37(3) and section 46 of that Act; and

(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with.

8. The learned counsel for the appellant has referred Ex.DW-1/A rapat No.299, which cannot be equated with order conferring proprietary rights under Section 104 of the Act. Part -V of the H.P. Tenancy and Land Reforms Rules 1975 provides attestation of mutation under Section 104 of the Act and while attesting the mutation under Section 104 of the Act in terms of Part-V ibid some minimum procedure is required to be followed. It is no body's case that rapat No.299 Ex.DW-1/A is the result of proceedings under Section 104 of the Act read with Part-V of the H.P. Tenancy and Land Reforms Rules 1975. The appellant on the basis of rapat No.299 Ex.DW-1/A cannot be heard to say that civil court has no jurisdiction to adjudicate the dispute raised by respondent in the plaint. On the contrary in Shankar (supra) the Division Bench has held as follows:-

“9. After analyzing the judgment in Chuhniya Devi v. Jindu Ram's case (supra), we have no doubt that the jurisdiction of the Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the

authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction.

10. Coming to the case in hand, it is not averred by the either party that either the proceedings were initiated or the order was passed under Chapter X of the Act. Therefore, we have no hesitation to hold that the ratio of judgment in Chuhniya Devi v. Jindu Ram's case is not applicable to the facts and circumstances of the present case and the Civil Court has the jurisdiction to decide the suit of the plaintiff."

9. In view of Shankar (supra), I have no hesitation in concluding that in the present case the civil court has jurisdiction to try the suit. The two Courts below have rightly considered all the aspects of the case and no fault can be found with the findings returned by the two Courts below. In the second appeal re-appreciation of the evidence is not possible unless it is shown that the impugned judgment is perverse or inadmissible evidence has been considered and material evidence has been ignored but the present case does not fall in that category. The appellant has failed to make out a case for interference. There is no merit in the appeal. The substantial question of law referred to above is decided against the appellant.

10. No other point was urged.

11. The result of above discussion, the appeal fails which is accordingly dismissed with no order as to costs.

12. Infructuous in view of the disposal of main appeal.

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