Shri Raja Durga Singh of Solan

Vs

Tholu

Civil Appeal No. 382 of 1960

(K. C. Das Gupta, J. R. Mudholkar JJ)

01.05.1962

JUDGMENT

MUDHOLKAR, J. –

In this appeal by special leave against the judgment of the Judicial Commissioner, Himachal Pradesh in second appeal two points have been urged on behalf of the appellant. The first is that the Court of the Judicial Commissioner was in error in interfering with a finding of fact of the District Judge and the second is that the Court of the Judicial Commissioner was wrong in holding that the suit was not triable by a civil court but is triable by a revenue court under s. 77 of the Punjab Tenancy Act, 1887 (Punj. XVI of 1887) (hereinafter referred to as the Act) which applies to Himachal Pradesh.

In order to appreciate these points it is necessary to state some facts. The appellant who was plaintiff in the suit was the former ruler of the State of Bhagat, one of the Simla Hill States. The State of Bhagat and several other Simala Hill States were merged in Himachal Pradesh on July 1, 1947. As a consequence of the merger the ruler surrendered his sovereignty to the new States. Khasra Nos. 70, 80, 81, 167, 263/170, 171, 172, 173 and 269/177 measuring in all 15 bighas and 19 biswas, among other property, were declared to be the private property of the appellant. It is the appellant's case that these fields are his Khudkhast lands, that they are recorded as much in the revenue papers ever since the year 1936 and that the defendants were granted licence to cultivate these lands on his behalf with the obligation that the entire produce from the lands should be handed over by them to the appellant at the end of every year. The consideration for the arrangement was remission in rent and land revenue which the appellant had granted to the respondents with respect to certain other lands which were leased out by him to the respondents. Bulk of these lands were declared to be the State property was a result of the merger and presumably the respondents have now to pay full assessment or rent with respect to them. According to the appellant the respondents failed to hand over the annual produce from the fields in suit to him and, therefore, he leased out the lands at Rs. 500/- per annum to Chuku Koli for Rs. 500/- for a period of one year from October, 1950. The respondents, however, obstructed Choku in taking possession of the land and despite repeated demands by the appellant, they kept him out of possession. He therefore, instituted a suit for possession and mesne profits from Rabi 1950 to Kharif 1953 at m. 500 per annum and future profits in July, 1954.

On behalf of the respondents it was contended that they were the occupancy tenants of these lands for the last two or three generations, that they were cultivating these lands jointly and severally and that the suit was not cognizable by a civil court. They also contended that had filed suit against the appellant in the court of the Assistant Collector, First Grade, Solon for a declaration to the effect

that they are in possession of the lands as occupancy tenants and that, therefore, the appellant's suit should be stayed. The trial court decreed the suit of the appellant as against all the respondents including the claim for mesne profit. The respondents preferred an appeal before the District Judge, Mahau. He dismissed the appeal and confirmed the decree of the trial court. They, therefore, preferred second appeal to the Court of Judicial Commissioner. The Judicial Commissioner allowed the appeal holding that the respondents were occupancy tenants of the lands and that consequently the provisions of s. 77(3) read with the first proviso thereto barred the jurisdiction of the civil court. On this finding the Judicial Commissioner set aside the decree granted by the trial court and affirmed by the District Judge and directed that the plaint be returned for presentation to proper court.

It is contended before us by Mr. Achhru Ram for the appellant that for a suit to be barred under s. 77(3) of the Act from the cognizance of a civil court two conditions have to be satisfied. The first is that the suit should relate to one of the matters described in sub-s. 3 and the second is that the existence of the relationship of landlord and tenant should be admitted by the parties. If these two conditions are not satisfied then, according to him, the suit is not barred from the cognizance of a civil court. In support of his contention he has relied upon the decision in Sham Singh v. Amarjit Singh [(1930) I.L.R. 12 Lah. 111]; Baru v. Nader [(1942) I.L.R. 24 Lah. 191 F.B.]; Daya Ram v. Jagir Singh [A.I.R. (1956) Him. Pra. 61]. He has also relied upon certain observations of this Court in Magiti Sasamal; v. Pandab Bissoi [(1962) 3 S.C.R. 673]. Section 77(3) and the first proviso there to run as follows :

> "The following suits shall be instituted in, and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :-
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> Provided that -
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> (1) where in a suit cognizable and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court shall endorse upon the plant the nature of the matter for decision and the particulars required by Order VII, rule 10, Code of Civil procedure and return the plaint for presentation to the Collector."

We are not concerned with the second proviso. Below the second proviso the kind of suits which are triable by the revenue courts are set out in three groups. It is contended on behalf of the respondents that the suit in question would fall under entry (e) in the second group. That entry reads thus :

> "suits by a landlord to eject a tenant."

They also contend that their suit before the revenue court was one under entry (d) which reads thus :

> "Suits by a tenant to establish a Claim to a right of occupancy, or by landlord to prove that a tenant has not such a right."

It would however, appear that not only it can (d) and (e) but every other item in the three groups relates to a dispute between tenants on the one hand and the landlord on the other. There is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It should, therefore, be reasonable to infer that the legislature barred only those suits form the cognizance of a civil court where there was no dispute between the parties

that a person cultivating land or who was in possession of land was a tenant. This is precisely what has been held in the two decisions of the Lahore High Court relied upon by Mr. Achhru Ran. In the first of these two cases Tek Chand J., observed :

> "It is obvious that the bar under clause (4) is applicable to those cases only in which the relationship of landlord and tenant is admitted and the object of the suit is to determine the nature of the tenancy i.e. whether the status the tenant falls under sections 5, 6, 7 or 8 of the Act."

In that case the suit was instituted by someone claiming to succeed to the tenancy of certain land on the death of the occupancy tenant. The learned Judge observed :

> "In a suit like the one before us the point for decision is not the nature of the tenancy, but whether the defendant is related to the deceased tenant and if so whether their common ancestor had occupied the land. If these facts are established, the claimant ipso facto succeeds to the occupancy tenancy, But if they are found against him, he is not a tenant at all."

As this facts were not established the High Court held that the landlord was entitled to sue the defendant who had entered on the land asserting a claim to be a collateral of the deceased tenant but who failed to substantiate his claim. This view was affirmed by a Full Bench consisting of five Judges in the other Lahore case. In Daya Ram; v. Jagir Singh [A.I.R. (1956) Him. Pra. 61] the same Judicial Commissioner who decided the appeal before us has expressed the view that where in a suit for ejectment the existence of the relationship of landlord and tenant is not admitted by the parties the Civil Court had jurisdiction to try the suit and that such a suit did not fall under s. 77(3) of the Act. In Magiti Sasamal v. Pandab Bissoi [(1962) 3 S.C.R. 673] this Court was considering the provisions of s. 17(1) of the Orissa Tenants Protection Act, 1948 (3 of 1948). The provisions of that section run thus :

> "Any dispute between the tenant and the landlord as regards, (a) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act, or (b) misuse of the land by tenant, or (c) failure or the tenant to cultivate the land properly, or (d) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (e) the quantity of the produce payable to the landlord as rent, shall be decided by the Collector on the application of either of the parties."

It was contended in that case on behalf of the respondents who claimed to be tenants that suit for permanent injunction instituted by the appellant landlord was barred by the provisions of s. 7(1). Dealing with this contention this Court observed as follows :

> "In other words, s. 7(1) postulates the relationship of tenants and landlord between the parties and proceeds to provide for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject-matter of s. 7(1) must be in regard to the five categories. That in the plain and obvious construction of the words 'any dispute as regards'. On this construction it would be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of s. 7(1) is unambiguous and clear. It refers to the tenant and landlord as such and it

> contemplates disputes of the specified character arising between them. Therefore, in our opinion, even on a liberal construction of s. 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of relationship of landlord and tenant falls to be determined by the Collector under s. 7(1)".

The observations of this Court would clearly apply to the present case also inasmuch so the relationship of landlord and tenant as between the parties to the suit is not admitted by the appellant.

Now we will come to the second point because the argument is that on the finding of the learned District Judge the respondents are tenants and, therefore, their ejectment cannot be ordered by a Civil Court. As already stated the appellant challenged the finding of the Judicial Commissioner on the point on the ground that it had no jurisdiction to reverse the finding of the District Court because it was a finding of fact on the question. There is no doubt in our mind that the learned Judicial Commissioner was in error in reversing the finding of fact of the District Judge particularly so because the finding of the District Judge is based upon a consideration of entries in the record of rights from the year 1936 onwards showing that the lands were the khudkhast lands of the appellant and were in his possession. The learned Judicial Commissioner has omitted to bear in mind the provisions of s. 44 of the Act which give a presumptive value to the entries in revenue records. It was argued before us that there are prior entries which are in conflict with those on which the learned District Judge has relied. It is sufficient to say that where there is such a conflict, it is the later entry which must prevail. Indeed from the language of s. 44 itself it follows that where a new entry is substituted for an old one it is that new entry which will take the place of the old one and will be entitled to the presumption of correctness until and unless it is established to be wrong or substituted by another entry. In Deity Pattabhiramaswamy v. S. Hanymayya [A.I.R. (1959) S.C. 57] this Court held that a finding of fact arrived at by the District Judge on the consideration of all evidence, oral and documentary, adduced by the parties, cannot be set aside in second appeal. The question here is whether the respondents are the tenants of the appellant. Though for determining the question documentary evidence fell to be considered, the finding on the question is no less a finding of fact than may have been the case if the evidence to be considered was merely oral. As was pointed out by this Court in that case as well as recently in Sir Chunilal v. Mohta & Sons Ltd., Bombay v. The Century Spinning & Manufacturing Co. Ltd., Bombay [(1962) Supp. 3 S.C.R. 549] an issue of law does not arise merely because documents which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents, have to be construed. Of course here, as we have already pointed out, the Judicial Commissioner has ignored the presumption arising from certain documentary evidence and therefore, there is an additional reason vitiating its finding.

Upon this view we set aside the decree of the Court of the Judicial Commissioner and restore that of the trial court as confirmed by the District Court. Costs throughout will be borne by the parties as incurred.

Appeal allowed.

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