SUPREME COURT OF INDIA

Udham Singh

Vs.

Ram Singh & Ors.

C.A.No.1930 of 1997

(Bruesh Kumar and Arun Kumar, JJ.)

23.07.2003

ORDER

Bruesh Kumar, J.

1. While granting the leave to file an appeal in this Court, the following order was passed on 12-3-1997:

> "Learned counsel for the petitioner submits that the question for decision is whether the averment in the plaint filed in the earlier suit (extracted at p. 25 of the paperbook), amounts to an admission of all the facts which are essential to satisfy the definition of 'tenant' in Section 2(17) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. Learned counsel further submits that the averment in the earlier plaint being treated as admission of the petitioner cannot be construed as an admission by the petitioner that the respondent is a tenant. His submission further is that this question of law which arose for decision in the second appeal was not properly appreciated or decided by the High Court.
> Leave granted."

2. To properly appreciate the background in which the abovesaid question arose for consideration it may be necessary to have the brief facts leading to the fact of admission said to be made by the plaintiff.

3. The appellant-plaintiff is undisputedly the owner of the land in question. Relevant entries in the revenue records for different years are in his favour which have been referred to in the detailed judgments of all the three courts, namely, the trial court, the first appellate court as well as in the judgment of the High Court in second appeal. For the first time, however, an entry of possession and occupancy tenancy is found recorded in favour of the defendants in the revenue records for the year 1975 which seems to be the cause leading to filing of a suit by the appellant in the year 1975, for a declaration and permanent injunction against the defendants. The suit, it appears, was not pursued and it was dismissed in default, even before

any written statement was filed. Thereafter, in 1978 the plaintiff filed another suit out of which the present proceeding arose. According to the case of the appellant-plaintiff, due to ill health, in the year 1975 he had engaged the defendants as labour for carrying out the cultivatory operation on wages of Rs 400 per annum. The plaintiff recovered from his illness in 1977. Taking advantage of the illness of the appellant-plaintiff, the defendant, in collusion with the officials of the Revenue Department got the entries made wrongly in their favour. The defendants also refused to vacate the land in question. Hence, the suit was filed for possession against the defendants who, according to the plaintiff, were trespassers on the suit property. The case of the defendants on the other hand, was that they have been in possession of the suit property for 15-16 years before the filing of this suit and at the time when the Himachal Pradesh Tenancy and Land Reforms Act, 1972, came into force in 1974 under which they acquired the tenancy rights in the said land. In support of their case, the defendants placed reliance, particularly, on two documents, namely, Exh. P-3, which contains an entry in their favour, and Exhibit D-3, daily report of the Patwari of the area which according to them indicates that they had been in possession of the suit land since October 1974 and that the daily diary was prepared in the presence of the owner of the land.

4. We find that the trial court has written a detailed judgment indicating a therein a number of documents and entries in the revenue records as well as the oral evidence adduced by the parties. On consideration and appreciation of the evidence the trial court came to the conclusion that the defendants failed to prove their possession anytime prior to 1975. Along with other facts, it was also observed that it would be highly improbable that any landlord would give the land on tenancy after the coming into force of the Himachal ^ Pradesh Tenancy and Land Reforms Act, 1972 so as to knowingly lose all his rights in the land. This fact was also taken note of that except for the entries made in the khasra girdawari after 17-4-1975, there is nothing on record to show that the defendants had been paying 180 maunds of produce as rent to the plaintiff. It is also observed that the said entries are obviously made in the crop inspection register after 1974-75. The evidence of payment of rent has not been found satisfactory and thus not accepted by the trial court. We have also found that the trial court has referred to the admission of Defendant 1 himself when he stated that the rent was paid by him four or five times prior to 1974. Thereafter, the Tenancy Act was enforced and, he stopped paying the rent. The court found that in the circumstances of the case the entry in khasra girdawari of 1975 was manipulated and it deserved to be ignored. It is also observed that if the defendants were in possession or were tenants prior to 1974, there is no evidence to indicate the same. Even the inspection of crop made in 1974 also does not support the case of the defendants. It is noted that entries in favour of the defendants were made with effect from Rabi 1975. According to the trial court, this also shows that the entries have been manipulated. The defendants have been held to be trespassers and liable to be ejected. Aggrieved by the order of the trial court, the defendants filed the first e appeal, which has also been dismissed and clear findings of facts based on the documentary and oral evidence has been recorded disbelieving the case of the defendants. The evidence led by the plaintiff indicating the circumstances under which he had to engage the defendants as labour to carry out the cultivatory operation on Rs 400 per annum has been believed. It is also noticed that entries in favour of the plaintiff till 10-4-1975 are there in the f revenue records

as owner in possession. The case of the defendants of paying rent to the plaintiff has been disbelieved and it has been recorded as the finding of fact that the defendants had been engaged as labour to cultivate the land by the plaintiff. The decree of the trial court was thus upheld by the first appellate court. At this stage, it may be pertinent to note that the respondent- defendant moved an application under Order 41 Rule 27 CPC for adducing g additional documentary evidence by bringing on record the plaint filed by the plaintiff in the earlier suit filed in 1975. The purpose to bring the said evidence on record was to show that the plaintiff had taken a contrary stand in the earlier suit by making an averment that the land was given on theka for one year but, however, the said application was rejected.

5. Aggrieved by the order passed by the first appellate court, the h respondent-defendant preferred second appeal and one of the questions raised was as to whether or not the order rejecting the application of the defendants under Order 41 Rule 27 CPC was a valid and legal order. By order dated 13- 11-1996 the High Court allowed the application and permitted the plaint of the earlier suit to be brought on record.

6. The High Court set aside the findings of fact recorded by the two courts below, namely, the trial court and the first appellate court, mainly on the basis of the two documents which have been taken into account. It is found that averments made by the appellant-plaintiff in the earlier suit amounted to admission of the fact that the defendants were admitted as tenants over the land in suit. The two documents particularly relied upon by the High Court may be referred to as they have been made the basis for coming to a different finding from those recorded by the two courts below. First such document is Ext. P-3. The High Court observed that Ext. P-3 is a copy of khasra girdawari from 1973 to 1975 wherein, in October 1974 for the first time, the defendants have been recorded as non-occupancy tenants on giving 180 mounds of grains, annually. We have perused the original documents, namely, khasra girdawari which has been marked as Ext. P-3 before the trial court and we find that it contains entries for several years and right from the very beginning the entries of ownership and possession are in favour of the plaintiff. For the first time an entry came to be recorded in favour of the defendants in October 1975 which has been clearly mistaken as an entry having been made in favour of the defendants since 1974. It made a material difference on the merits of the case of the plaintiff since it is his case that due to ill health, the defendants were engaged as labour in April 1975 to carry out the cultivatory operation over the land in question. TTie entry in October 1974 is not in favour of the defendants as it has been taken to be by the High Court. It is a clear misreading of the document which has materially affected the merits of the case.

7. The next document which has played a vital role in the decision of the High Court is Ext. D-3. It is the daily diary report dated 15-10-1974. In the judgment of the High Court, it is observed that in the said document cultivatory possession of the suit land was recorded in favour of the defendants as on 15-10-1974 in the presence of the owners. On this basis, the High Court went on to record a finding to the following effect:

> "On the basis of this entry, occupation of the defendants since October 1974 over the suit land as tenants on payment of rent referred therein was recorded and thereafter during settlement in parcha-zamidara certified copy of which on record is Ext. D-l, the defendants have been recorded as owners in possession of the suit land."

We have perused the original document as filed and proved before the trial court and have gone through the same with the help of the learned counsel for both parties. It only mentions the plots numbers, etc. but nowhere it is indicated in whose possession those plots were nor is there any indication that the possession was delivered by the owner on 15-10-1974 to the dependants. The document is a true copy of the original daily diary report. It does not indicate that the document was ever signed by the plaintiff. This misreading of the document gave rise to an incorrect inference drawn by the High Court that the defendants had been in possession since prior to 1975. The said daily diary report has been taken in support of the entry in khasra girdawaris which the High Court misread and in respect of which, as indicated earlier, the trial court expressed its view that it is not to be taken as genuine entry.

8. The third circumstance which has heavily weighed with the High Court is the alleged admission of the plaintiff in the plaint of the earlier suit. The High Court has quoted the relevant paragraph of the earlier plaint in the judgment. It is to the following effect:

> "That one year before the plaintiff gave the suit land in favour of the defendants for cultivation on theka for one year, which period had expired and after expiry of the period of theka the defendants have handed over the possession in favour of the plaintiff, and now the defendants have no concern over the suit land."

9. The above averments made in the plaint, as indicated earlier has been taken as admission of the plaintiff, however, this question needs to be looked into. First of all, we find that the averment made in the previous plaint does not lead to a conclusion that the defendants were admitted as tenants though no doubt the word "theka" has been used. But the expression theka can be used in many ways e.g. it may be "theka" for labour. It required to be explained or elaborated. We also find that the earlier suit was dismissed in default. No written statement was filed, nor were issues framed. Hence, obviously no trial took place. No doubt admission is the best evidence against the person who is said to have made it, but it can always be explained. One whose previous statement is to be treated as an admission or it is sought to be used, he has to be confronted with such a statement. We find that though the document, namely, the plaint in the earlier suit, has been brought on record but no request seems to have been made for summoning the plaintiff. Learned counsel for the appellant has placed reliance on the decision of this Court in Sit a Ram Bhau Patil v. Ramchandra Nago Patil1. Our attention has been drawn to the observations made in paragraph 17 of the Report to the effect that the admission has to be clear, unambiguous and proved conclusively. It is a question which needs to be considered as to what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. In our view, the High

Court was again wrong in attaching much weight to the averments made in the earlier plaint and coming to the conclusion that the defendants were admitted to be the tenants by the plaintiff on the land in question.

10. Learned counsel for the respondents has vainly tried to place reliance upon the averments made by the plaintiff in the earlier plaint. It is next submitted by him that the finding arrived at by ignoring the vital evidence is vitiated and can be interfered with in the second appeal. In support of this a contention learned counsel referred to a decision entitled Ishwar Dass Jain v. Sohan LaP. So far as the position of law is concerned, there is no dispute about the same, however, in the present case, nothing could be pointed out which can be said to have been ignored by the trial court or the first appellate court while arriving at the findings of fact. It was lastly pointed out that the civil court has no jurisdiction to entertain the suit filed by the plaintiff and in _ this connection he drew our attention to the last paragraph of the judgment of the High Court.

11.The observations of the High Court on the point of jurisdiction may be quoted, which read as under:

> "It may be very specifically pointed out here that so far as the present case is concerned, as per the allegations made in the plaint, the plaintiff c filed a suit for possession against a trespasser on the basis of title. Such a suit primarily is triable by the civil court and in the present case the plaintiff has failed to prove his plea that he was the owner and the defendants were the trespassers. Suit, as discussed above, has to be disallowed. In the present case, relationship of landlord and tenant between the parties existed and stood established during the trial of the d present suit. On the basis of the ratio of Chuhniya case (supra) the plaintiff otherwise has not been successful to make out a case for civil court's interference. On that account also, the plaintiff has not been successful."

12. According to the own observations of the High Court on the basis of the averment made in the plaint the suit was cognizable by the civil court. The averments and prayers made in the plaint, are relevant for purpose of deciding the forum where the cause will lie. Looking to the plaint case, the High Court was itself of the opinion that the civil court was competent to take cognizance of the suit. But we feel that the High Court went wrong while holding otherwise on the basis of the findings ultimately arrived at by the High Court on facts that the defendants were not the trespassers. The f jurisdiction is not to be decided on the basis of the ultimate findings arrived at by the Court. We have already held earlier that the High Court erred in upsetting the concurrent findings of fact arrived at by the two courts of fact, namely, the trial court and first appellate court after detailed and elaborate discussion of the oral as well as documentary evidence on the record. The High Court misread the documents and thereby upset the findings of courts g below.

13.In view of the above discussions, we allow the appeal and set aside the judgment and order passed by the High Court. There would be no order as to costs.

(2007) 15 SCC 529