

# SUPREME COURT OF INDIA

Madan Kishore

Vs.

Major Sudhir Sewal

C.A.No.7179 of 2001

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

02.09.2008

## JUDGMENT

### **Tarun Chatterjee, J**

1. This appeal by special leave is directed against the judgment and decree passed by a learned Judge of the High Court of Himachal Pradesh in Regular Second Appeal No. 281 of 1988 reversing the judgment and decree dated 19th of May, 1988 passed by the Additional District Judge, Nahan and the judgment and decree dated 30th of March, 1985 passed by the Subordinate Judge (First Class - Paonta Sahib, Dist. Sirmaur), whereby the Second Appeal filed by the plaintiffs/respondents was allowed and thereby, the suit filed by them was decreed. Be it mentioned herein, the original plaintiff died during the pendency of the suit and his heirs and legal representatives were substituted in his place.

2. The case made out by the original plaintiff (since deceased) in his plaint, may be summarized as follows :- One, Randeep Singh, was the owner of the land measuring 83 bighas, 7 biswas comprising in Khata Nos. 11/38 to 11/41 in village Amboa, Tehsil - Paunta Sahib, Dist. Sirmaur. The said land was under the tenancy of Kundan Singh, Gulab Rai and Jaishi Ram, sons of Sukh Dayal to the extent of 1/3rd share each. After the death of Kundan Singh, Gulab Rai and Jaishi Ram, the tenancy rights were inherited by their heirs and legal representatives. Bhanu Pratap Singh, son of Kundan Singh, was residing, at the relevant point of time, in Nigeria, whereas Jagdarshan Lal, son of Gulab Rai, was in Government service in Uttar Pradesh. Accordingly, the above- mentioned land was given in management to the defendant No.1/appellant-Madan Kishore who cultivated the same for and on behalf of all the heirs and legal representatives of the aforementioned tenants. Out of the aforesaid land, comprised in Khasra Nos. 102, 104, 208 and 277, as described in the Jamabandi for the year 1974-75, (hereinafter referred to as the "suit land") is the land, which is under dispute. After coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Reforms Act, 1953 (in short the "Act"), the defendant No.1/appellant got himself recorded as sub-tenant in respect of the suit land and on the basis of such entry in the record of rights obtained proprietary rights thereof on 23rd of March, 1967. After obtaining the proprietary rights, some land, out of the suit land, was sold by the defendant No.1/appellant to defendant

No. 2/respondent. Defendant No.1/appellant also created mortgage in respect of the remaining suit land in favour of defendant No. 3/respondent. Jagdarshan Lal (since deceased) who was the original plaintiff in the suit and in his place his heirs and legal representatives were brought on record came to know about the wrongful entry in the revenue record in the name of the appellant in 1978. Jagdarshan Lal, the original plaintiff (since deceased) further pleaded that the defendant No.1/appellant was holding the suit land as a trustee and licensee on his behalf and could not have acquired proprietary rights in respect of the suit land under the Act and the sale and mortgage effected by him in favour of defendant Nos. 2 and 3/respondents was null and void and such transfer was not binding either on the deceased plaintiff or on them being his heirs and legal representatives. As noted herein earlier, the original plaintiff Jagdarshan Lal died during the pendency of the suit and the present respondents in this Court, being his sons, daughters and widow were substituted in his place. Upon the aforesaid allegations made in the plaint, the original plaintiff (since deceased) had filed a suit for declaration of title and for possession in respect of the suit land against the appellant and others.

3. The defendant No.1/appellant entered appearance and contested the suit by filing a written statement denying the material allegations made in the plaint. In the written statement, the appellant, however, admitted that the suit land along with some other land was originally under the tenancy of Kundan Singh, Gulab Rai and Jaishi Ram, but he denied the exclusive possession of Jagdarshan Lal (since deceased), original plaintiff, over the suit land or that the same was given to him by deceased Jagdarshan Lal as a trustee or licensee. It was further averred by the appellant in his written statement that Jagdarshan Lal was residing in Uttar Pradesh and he had inducted defendant No.1/appellant as a sub-tenant in respect of the suit land and that on coming into force of the Act, he acquired proprietary rights in respect of the same in 1967. He also pleaded in his written statement that a part of the suit land was sold by him for consideration to defendant No.2, while the remaining part of the suit land was mortgaged by defendant No.1/appellant to defendant No. 3/respondent. A plea of adverse possession was also taken in the written statement by the appellant. Accordingly, defendant No. 1/appellant sought for dismissal of the suit.

4. Defendant No. 2/respondent, in his written statement, pleaded that since he was a bonafide purchaser for value without notice, it could not be said that he had not acquired right, title and interest in the suit land. Plea of limitation and maintainability of suit was also raised. Accordingly, defendant No.2/respondent also pleaded dismissal of the suit

5. So far as the case of the defendant No.3/respondent in his written statement was concerned, he had advanced loan to defendant No. 1/appellant in respect of the suit land after verification of the revenue record and the possession of defendant No. 1 at the spot. According to him, neither the plaintiffs/respondents nor their predecessors in interest ever objected to the creation of mortgage in his favour by defendant No. 1/appellant and, therefore, he was entitled to recover the balance amount of loan by auction of the suit land. Accordingly, defendant No. 3 also sought for dismissal of the suit. On the pleadings, as mentioned above, the Trial Court framed the following issues :-

- “i) Whether defendant No. 1 was in possession of the suit land as IMAMAT DAR, IZZATDAR or TRUSTEE for and on behalf of the plaintiff as alleged. If so, to what effect?
- ii) If Issue No. 1 is proved, whether the plaintiff is entitled to the possession of the suit land covered by Patta?
- iii) Whether the defendant No. 1 was in possession of the suit land as a tenant under the plaintiff and the Patta was granted accordingly?
- iv) If issue No. 3 is not proved, whether the defendant No. 1 is in adverse possession of the suit land after the grant of Patta in his favour?
- v) Whether suit is within time?
- vi) Whether the suit is not maintainable?
- vii) Whether the plaintiff is estopped by his act and conduct from filing the present suit?
- viii) If Issue No. 3 and 4 are not proved, whether defendant No. 3 is entitled to recover the suit amount from the owners of the suit land?
- ix) Whether defendant No. 2 is a bonafide purchaser, if so to what effect?"

6. So far as Issue Nos. (i), (ii) and (v) are concerned, the Trial Court found these issues against the plaintiffs/respondents, whereas, Issue No. (iii) and (vi) were found to be in favour of defendant No. 1/appellant. So far as Issue No. (vii) is concerned, it was decided against the defendants and Issue Nos. (iv) and (ix) were held to have become redundant in view of the findings on Issue Nos. (i) to (iii). In respect of Issue No. (viii), defendant No. 3 / respondent was held to be entitled to recover the amount from defendant No. 1/appellant. Upon the aforesaid issues being decided, the Trial Court dismissed the suit of the plaintiffs/respondents, which was affirmed by the Appellate Court in appeal.

7. Before us, the learned counsel appearing for the appellant, at the first instance, submitted that since Kundan Singh, Gulab Rai and Jaishi Ram (since deceased) were admittedly the occupancy tenants of the suit land and on their death the suit land was inherited by defendant No. 1/appellant, Bhanu Pratap, Anand Kishore and Jugal Kishore. He had also drawn our attention to the fact that it was an admitted position that Bhanu Pratap, son of Kundan Singh was residing in Nigeria since long and that deceased Jagdarshan Lal was serving in Uttar Pradesh and, therefore, defendant No. 1/appellant used to look after the suit land on behalf of all the tenants and that being the position, it cannot be said that the entries in the revenue record in the name of defendant No.1/appellant could be said to be wrong. The case put forward by defendant No. 1/appellant was that of a sub- tenancy and alternatively it was contended by the learned counsel for the defendant No. 1/appellant that since the Patta was

granted in favour of defendant No.1 by the Compensation Officer under the Act, therefore, he had acquired the proprietary rights over the suit land and also the title by way of adverse possession.

8. The submissions so put forward, as noted herein earlier, were contested by the learned counsel appearing on behalf of the plaintiffs/respondents.

9. Having heard the learned counsel for the parties appearing before us and after going through the judgment under appeal as well as the judgments of the courts below and the materials on record including the oral and documentary evidence, we are not in a position to upset the judgment of the High Court in the second appeal although the concurrent judgments of the courts below were set aside by the High Court in the exercise of its power under Section 100 of the Code of Civil Procedure.

10. It is not in dispute that proprietary rights conferred on defendant No. 1/appellant in respect of the suit land were in terms of Section 27 (4) of the Act.

11. The first question that needs to be decided is whether a sub-tenant under the Act is entitled to file an application for conferring proprietary rights under the Act in respect of the suit land. To answer this question, it would be appropriate for us to look into the scheme of the Act and certain relevant provisions of the same.

12. Chapter III of the Act deals with acquisition of proprietary rights by tenants. Section 11 of the Act confers a right only on the tenant of the land to acquire interest of landowner. Section 11 reads as under:

"(1) Notwithstanding any law, custom or contract to the contrary a tenant other than a sub-tenant shall, on application made to the compensation officer at any time after the commencement of this Act, be entitled to acquire, on payment of compensation, the right, title and interest of the landowner in the land of the tenancy held by him under the landowner; Provided that a tenant not having.....

(2).....

(3).....

(4) The tenant may pay the amount of compensation as determined by the compensation officer under sub-section (3) either in one lump sum or in such number of instalments not exceeding ten as may be determined by the Compensation Officer during a period not exceeding five years; and such compensation shall be paid on such date or dates as may be fixed by the Compensation Officer in this behalf.

(5).....

(6) On and from the date of the grant of the certificate under sub-section (5) the tenant shall become the owner of the land comprised in the tenancy and the right, title and interest of the landowner in the said land shall determine.

(7).....

(8)....."

13. Section 13 of the Act deals with total compensation payable by a tenant. Now comes Section 14 of the Act which deals with acquisition by the tenant of the rights of the landowner in a portion of the lands of tenancy in certain circumstances. Section 14 is as under:

"(1) Notwithstanding anything contained in Section 11, a tenant other than a sub-tenant who holds a tenancy exceeding twelve acres in area may at any time after the commencement of this Act, make an application to the Compensation Officer for surrender to the landowner an area equal –

(a) in the case of occupancy tenant, to one-fourth of the lands of the tenancy; and

(b) in other cases, to three-eighths of the lands of the tenancy.

(2) When an application for surrender has been made under sub-section (1) of the Compensation Officer shall demarcate the area surrendered in favour of the landowner from the rest of the lands of the tenancy and deliver possession of the same to the landowner.

(3) Upon such delivery of possession the tenant shall forthwith become the owner in respect of the rest of the lands of the tenancy and the right, title and interest of the landowner in the said lands shall determine."

14. On a plain reading and on consideration of the scheme of the Act, it would be pellucid that it was only the tenant who could make an application under the Act for acquiring proprietary rights in respect of the suit land. In our view, the scheme of the Act and the aforesaid relevant provisions do not indicate that any right was conferred by the Act on the sub-tenant to acquire any proprietary rights in respect of the suit land under the Act. A reading of the provisions made in Sections 11 and 14 of the Act would clearly show that the Legislature has specifically excluded the sub-tenant from making any application for acquiring proprietary rights under the Act because by using the expression in Sections 11 and 14 of the Act, namely, "a tenant other than a sub-tenant", would clearly mean that the sub-tenant was specifically excluded from making such application before the Compensation Officer. However, an argument was advanced by the learned counsel for the appellant for the purpose of submitting that defendant No. 1/appellant, who was claiming to be a sub-tenant, would be entitled to make such application under the Act before the Compensation Officer in view of the expression used by the Legislature in Section 27(4) of the Act, namely, "such

tenant who cultivates such land". We are not in a position to accept this submission of the learned counsel for the appellant for the simple reason that a Division Bench of the Himachal Pradesh High Court in the case of Smt. Dev Lata Vs. Alam etc. [1975 ILR 40], has explained the meaning of the expression used under Section 27(4), namely, "such tenant who cultivates such land" in a lucid manner, which we feel appropriate to reproduce hereunder :-

"Why did the statute refer to "such tenant who cultivates such land" in Section 27(4) when in Section 11 and Section 14 it refers to a tenant holding land in tenancy and does describe him by reference to the criterion of cultivation. An analysis of the scheme set out in Section 27 explains why. Section 27(2) contemplates two categories of land, land which is under the personal cultivation of the landowner and land which is not under his personal cultivation. To the former Section 27 does not apply. It applies to the latter. It will be noticed that the Statute does not make this test relevant in Section 11 and Section 14. The criterion for applying Section 27 is that the land must not be under the personal cultivation of the landowner. The right, title and interest of the landowner in such land vests in the State Government and is transferred by the State Government to the tenant who cultivates the land. The word "who cultivates such land" are descriptive of the tenant, and indicate the tenant who holds the land. Section 27, as I have said before, refers to land which is not under the personal cultivation of the landowner but is cultivated by the tenant. It is true that when a tenant sub-lets the land to another, it is the sub-tenant who is in actual cultivatory possession. Possession in fact is not with the tenant. But looked at in contradistinction to the landowner it is the tenant who will be said to cultivate the land when the landowner cannot be described as cultivating it. I am unable to hold that reference in Section 27(4) was intended to a sub-tenant. Chapter III is concerned entirely with the transfer of rights from landowners to tenants."

15. Having considered the discussions made by R.S. Pathak, J. (as His Lordship then was) as quoted hereinabove, in detail and in depth and after considering the scheme of the Act and the relevant provisions, as discussed herein earlier, we do not find any reason to differ with the views expressed by His Lordship in the aforesaid decision. Accordingly, we are in full agreement with the views expressed by the High Court that a sub-tenant is not entitled under the Act to claim proprietary rights before the Compensation Officer nor a sub-tenant would be entitled to file any application for such conferment of the right before him.

16. There is another aspect of the matter. The first Court of fact, on consideration of the evidence, oral and documentary, on record, came to the conclusion that the defendant No. 1/appellant could not prove to be a sub-tenant in respect of the suit land. This finding of fact was affirmed by the High Court by the impugned judgment in the second appeal, which cannot be upset until and unless we come to the conclusion that such finding of fact was perverse or arbitrary. For this purpose, we looked into the evidence and other materials on record and we are satisfied that the finding of fact arrived at by the final Court of fact and affirmed by the High Court in the second appeal, cannot be interfered with, as we do not find any infirmity for which we can hold that such findings are perverse or arbitrary.

17. Therefore, even assuming that a sub-tenant is entitled to make a claim before the Compensation Officer for acquiring proprietary rights in respect of the suit land under the Act, even then, defendant No. 1/appellant, not being a sub-tenant, as found by the First Appellate Court and affirmed by the High Court in the second appeal, could not at all apply for conferment or acquisition of proprietary rights in respect of the suit land under the Act.

18. The next question that needs to be decided is whether the order conferring proprietary rights on defendant no. 1/appellant by the Compensation Officer in respect of the suit land was without jurisdiction and, therefore, it was a nullity or not. In our view, the High Court was perfectly justified in holding that the said order of the Compensation Officer was without jurisdiction and that the Compensation Officer was lacking jurisdiction in holding that the defendant No. 1/appellant could be conferred proprietary rights in respect of the suit land under the Act. While holding that the order of the Compensation Officer conferring proprietary rights on the defendant no. 1/appellant was without jurisdiction and, therefore, a nullity, reliance could be straightway placed on a decision of this Court in the case of *Ayudh Raj & Ors. vs. Moti S/o Mussadi*<sup>1</sup> in which the High Court had also placed reliance on the impugned judgment. In this case, the same Act was under consideration. This Court held in that decision that the order passed by the Compensation Officer lacked jurisdiction and, therefore, it was a nullity and no order need be passed by the Civil Court to set aside such type of order before seeking declaration of title and possession of the suit land. It is not in dispute that if this position is accepted, the suit filed by the predecessor in interest of the respondents was in time as the suit was for possession based on title and, therefore, could be governed by Article 65 of the Limitation Act.

19. For the reasons aforesaid, we are in agreement with the judgment of the High Court holding that the suit was filed within the period of limitation but before we conclude on the question of limitation of the filing of the suit, we may refer to a decision of this Court in the case of *State of Punjab & Ors. vs. Gurdev Singh Ashok Kumar*<sup>2</sup> as the same was relied on by the learned counsel for the appellant to show that the suit was barred by limitation.

20. In our view, that decision is not applicable to the facts and circumstances of the present case. That suit was filed for declaration that the dismissal of the respondent was wrongful or ultra vires. While dealing with this fact, this Court in para 8 observed as follows:-

"It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

21. In view of our findings arrived at herein earlier that the order passed by the Compensation Officer was a nullity and nonest in the eyes of law and, therefore, without jurisdiction, we do not think that this decision could be applied in the facts and circumstances as stated herein earlier. So far as the other two decisions, namely, *T.Vijendradas & Anr. vs. M.Subramanian & Ors.*<sup>3</sup> and *A.V.Papayya Sastry & Ors. vs. Govt. of A.P. & Ors.*<sup>4</sup> are

concerned, we do not think that these decisions can have any application to the facts and circumstances of the present case. There is no quarrel about the proposition that if there was any case of fraud, the question for setting aside the order which was passed on fraud either on the court or on the party could not arise at all. Accordingly, the aforesaid two decisions cannot come in the aid to decide the present controversy raised before us.

22. So far as the case of bona fide purchase for value without notice as made out by defendant no.1/appellant is concerned, there is no infirmity in the finding of the High Court that defendant no.2/respondent could not be said to be a bona fide purchaser for value without notice and, therefore, the sale made by defendant no.1/appellant in favour of defendant No. 2/respondent was not binding on the plaintiffs/respondents. So far as the case of defendant no.3 is concerned, we are in agreement with the findings of the High Court holding that a case of mortgage as pleaded by defendant no.3/respondent could not be accepted in the absence of any finding to that effect.

23. For the reasons aforesaid, we are of the view that the appeal has no merit and accordingly it is dismissed without any order as to costs.

<sup>1</sup>*AIR 1991 SC 1600*

<sup>2</sup>*AIR 1991 SC 2219*

<sup>3</sup>*2007 (8) SCC 751*

<sup>4</sup>*2007 (4) SCC 221*