

SUPREME COURT OF INDIA

Tarsem Lal

Vs.

Ram Sarup

C.A.No.4919 of 2014

(Chandramauli Kr.Prasad and Sudhansu Jyoti Mukhopadhaya JJ.)

28.04.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.
2. This appeal is directed against the judgment and decree dated 2nd May, 2008 passed by the High Court of Himachal Pradesh, Shimla in R.S.A. No.126 of 1996. By the impugned judgment and decree High Court reversed the concurrent finding of the Courts below and held that Section 36 (wrongly mentioned as Rule 36 in the impugned judgment) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the Act) is applicable to tenancy land and not to the ownership land owned by a person, and therefore, not applicable to the appellants herein. The judgment and decree dated 21st November, 1995 passed by the learned Additional District Judge (1) Dharamshala Camp at Una in Civil Appeal No.39/92, RBT No.206/94 were set aside and the suit was dismissed.
3. The factual matrix of the case is that predecessor-in-interest of the appellants, Faqir Chand, the original plaintiff filed a suit against Daulat Ram, Sukh Dev, Ram Sarup and Smt. Vidya Devi for permanent injunction restraining them from removing the pump set or interfering, in any manner, with the right of the plaintiff to irrigate his land measuring 25 Kanals 16 Marlas from well and pump set situated in land

measuring 8 Marlas bearing Khasra No.114R/29 situated in village Basal, Tehsil and District Una vide Jamabandi 1981-82.

4. The case of the original plaintiff was that he was inducted as a tenant of suit land by the respondents, on an annual rent of Rs.1614/- for a period of 10 years by registered lease deed dated 23rd August, 1968, along with right of irrigation from a common source in the form of well situated on the remaining land belonging to the landlord. He was in possession of 25 Kanals 16 Marlas of land comprised in Khasra Nos.114R/19/4, 21/2, 22/1, 115S/1/2, 2,3, 8/1, 9/1 and 26 situated in village Basal, Tehsil and District Una vide Jamabandi 1981-82. On coming into force of the H.P. Tenancy and Land Reforms Act, 1972, the property rights of the suit land was conferred on tenants, including the original plaintiff under sub-Section (3) of Section 104 of the Act.

5. Further, the case of the plaintiff was that the whole of the suit land was irrigated from the well and pump set situated in Khasra No.114R/29 situated in village Basal, Tehsil and District Una. The plaintiff was given right to irrigate 25 Kanals 16 Marlas pursuant to the agreement dated 23rd August, 1968 from well and pump set situated in Khasra No.114R/29. The plaintiff, thereby, pleaded his right to irrigate the land from the well under the Act and Rules and further submitted that the defendants have no right to interfere with such right of the plaintiff. It was the case of the plaintiff that the defendants have threatened him that they would not allow the plaintiff to use the well for irrigation and, therefore, the plaintiff filed the suit.

6. The suit was contested and a common written statement was filed by the original defendants. Stand of the defendants was that the plaintiff was a lessee for a fixed term and after the expiry of the lease the plaintiff ceased to have any interest in the suit property. The defendants were within their right to refuse the plaintiff to use the well. The plaintiff filed replication to the written statement. The learned Trial Court after noticing Section 36 of the Act decreed the suit on 29th February, 1992.

7. Ram Sarup, defendant No.3-respondent No.1 herein, assailed the judgment and decree dated 29th February, 1992 by way of appeal which, after hearing, was dismissed on merits by the learned Additional District Judge on 21st November, 1995. Ram Sarup thereafter came up in second appeal against the judgment and decree dated 21st November, 1995. The second appeal was admitted on following substantial

questions of law:

- i) Whether the learned courts below mis-appreciated the provisions of law applicable pleadings of the parties and the evidence adduced by them in the case in hand correctly and thus the findings as arrived at stand vitiated ?
- ii) Whether suit for permanent injunction is maintainable against the true owner ?
- iii) Whether the person held to be owner in possession of the property can be restrained from using the same as per his desire ?

8. The High Court by the impugned judgment and decree dated 2nd May, 2008 passed in second appeal held that Section 36 does not create any right rather it protects the right. In order to invoke Section 36 to have the facility of irrigation the plaintiff will have to prove his right of irrigation on the tenancy land. Section 36 is not applicable to ownership land. The High Court while accepting the plaintiff as owner of the tenancy land observed that once he became the owner of the tenancy land he will have to show his right to irrigate the land from the well of the defendants situated on different parcel of land. The plaintiff has no right to irrigate the suit land to which he had become owner pursuant to agreement.

9. It is not in dispute that Faqir Chand, original plaintiff, i.e., predecessor-in-interest of the appellants was inducted as tenant pursuant to a registered deed dated 23rd August, 1968 executed by the land owner. As per the Lease Deed he was inducted as a tenant with a right of irrigation with common source in the form of well situated on Khasra No.114R/29 situated in village Basal, Tehsil and District Una.

10. Section 36 of the Act relates to tenants right to water, as is reproduced below:

Section 36. Tenants right to water “ Save in proportion to reduction in the tenancy, if any, a landowner shall not be competent to curtail or terminate the supply of canal, Kuhl or use of well water enjoyed by tenant immediately before the commencement of this Act, and a breach of this provision shall constitute a cognizable offence punishable with fine which may extend to one hundred rupees shall be triable by a Naya Panchayat competent to hear criminal

cases.

11. The perusal of Section 36 would show that the landlord shall not be competent to curtail or terminate the supply of canal, kuhl or use of well water enjoyed by a tenant immediately before the commencement of the Act and breach of the said provision shall constitute a cognizable offence punishable under the law. In view of Section 36, after enactment of law, the original plaintiff had a right to water to which he was entitled prior to the proclamation of the Act, the land owner was not competent to curtail or supply of water enjoyed by the plaintiff immediately before the commencement of the Act.

12. Sub-Section (3) of Section 104 reads as under:

Section 104(3). “ All rights, title and interest (including a contingent interest, if any) of a landowner other than a landowner entitled to resume land under sub-section (1) shall be extinguished and all such rights, title and interest shall with effect from the date to be notified by the State Government in the Official Gazette vest in the tenant free from all encumbrances.

Provided that if a tenancy is created after the commencement of this Act, the provision of this sub-section shall apply immediately after the creation of such tenancy.

13. As per the aforesaid provision, all right, title and interest including a contingent interest of a land owner other than the land owner entitled to resume land under sub-section (1) shall be extinguished and all such rights, title and interest in respect of the land in question vest in the tenant, i.e. original plaintiff, free from all encumbrances from the date the Act came into force. The Act was published in the Official Gazette on 21st February, 1974 vide Act No.8 of 1974. What is not in dispute is that the original plaintiff became owner of the suit land by operation of law and continued to enjoy all the rights including right of irrigation from the common source which was in possession of the original landlord.

14. The aforesaid fact has been rightly appreciated by the Trial Court and the First Appellate Court which has also noticed that the mutation in respect of the land recorded in the revenue record of 25th April, 1982 is clearly showing the well as

source of irrigation of the land. In such circumstances, it was not open to the High Court to hold that a tenant on being land owner ceases his right to water which he was enjoying prior to the Act. The High Court failed to appreciate Section 36 of the Act and erred in holding that Section 36 is applicable to tenancy land and not to the land owned.

15. For the reasons aforesaid, we set aside the judgment and decree dated 2nd May, 2008 passed by the High Court in R.S.A. No.126 of 1996 and affirm the judgment and decree passed by the Trial Court as confirmed by the First Appellate Court. The appeal is allowed. No costs.