

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

C. Revision No. 99/2006

Date of Decision 12.12.2008

Randhir Singh v. Gian Chand & Anr.

Coram:

Hon'ble Mr.Justice Vinod Kumar Gupta

Appearing Counsel:

For the petitioner(s): Mrs.Sindhu Sharma, Advocate

For the Respondent(s): Mr. S.D. Sharma, Advocate

i/ Whether to be reported in
press, Journal/Media : Yes/No

ii/ Whether to be reported in
Digest/Journal : Yes/No

Plaintiff-respondent No.1 herein Gian Singh has filed a civil suit in the court of Sub Judge Kathua for declaration and restoration of possession besides permanent injunction in respect of land comprising Khasra No. 863/778 situate in village Logate Tehsil Kathua measuring 4 kanals. Respondent-2 sold 4 kanals of land comprising in Khasra No. 863/778-min situated in village Logate Tehsil Kathua for a consideration of Rs.40,000/- to petitioner herein vide sale deed dated 20.7.2000. Respondent No 2 Mohar Singh was recorded

as owner in possession in the revenue record. Respondent Gian Chand filed a civil suit seeking declaration to the effect that the said sale deed executed by respondent Mohar Singh in favour of the petitioner herein in respect of above mentioned land is null, void, ineffective and inoperative with consequential relief of restoration of possession to him besides grant of permanent injunction restraining the other party from changing the nature of user of the land by raising any construction whatsoever. The plaintiff-respondent No.1 herein claims himself to be the tenant of the above said land and an appeal was also filed before the Commissioner, Agrarian Reforms and the same was pending there. The defendants in the suit contested the suit on the ground that the civil court has no jurisdiction besides other pleas.

On the pleadings of the parties the learned trial court framed a preliminary issue in respect of the jurisdiction which reads as under:-

“Whether the suit before this court is not maintainable in view of the bar under Agrarian Reforms Act?OPD”

After hearing the parties the learned trial court vide its order dated 19.5.2007 came to the conclusion that civil court

has jurisdiction in the matter and decided the issue against the defendant.

Being aggrieved by this order, the defendant-petitioner herein filed this revision petition.

I have heard the learned counsel for the parties and perused the record on the file.

Mrs Sindhu Sharma learned counsel for the petitioner has submitted that the dispute in the matter is between tenant and owner in respect of land covered under the provisions of Agrarian Reforms Act as such civil court has no jurisdiction. On the other hand, Mr. S.D. Sharma, learned counsel for respondent No. 1 has submitted that it is civil court which can declare any sale deed null and void under the power vested in the civil court under section 9 of the Code of Civil Procedure.

Section 25 of the Agrarian Reforms Act, 1976 (for short hereinafter referred as the Act) bars the jurisdiction of civil court to settle, decide or deal with any matter in any proceedings or case which is required to be determined under the Act or the rules made there under. This section reads as under:-

“25. Bar of jurisdiction of Civil Court.

Notwithstanding anything contained in any law for the time being in force-

(a)no Civil Court shall have jurisdiction to settle, decide or deal with any question or to

determine any matter arising under this Act or the rules made thereunder; and

(b)no order of any officer or authority passed under this Act or the rules made thereunder shall be called in question in any Civil Court.”

From the plain reading of this provision, it is clear that any question or matter arising under this Act or the rules cannot be decided by the civil court nor any order passed by any officer or the authority under the Act or the rules made there under shall be called in question in civil court. In such circumstances, the scheme of the Act is to be examined. This Act is a special enactment and it takes away or abridges vested rights conferred in respect of land under the existing laws, creates new rights and obligations, provide new remedies and prescribe new procedure and confers new jurisdiction. Section 4 of the Act extinguishes the rights, title on a person in land if he is not in its cultivating possession in Kharif 1971 and vests the same in the State and such extinguishment has to be followed by attestation of mutation. Thus a tiller in terms of the Act cultivating the land personally on the material date is entitled for conferment of procedural rights under sections 4 and 8 of the Act in respect of the land held by him in 1971 in his own right. However, unauthorized cultivation was not treated as personal cultivation for the purpose of section 3. Section 35 of the Act bars the transfer of any land after

September 1971 in order to defeat the provisions of the Act. Under section 4 of the Act the powers and jurisdiction to determine any question as to in whose land was to be settled vests with the Collector under the Act. Further section 19 gives the power of the Revenue Officers under the Act. It reads as under:-

“19. Powers of Revenue Officers

- (1) Unless the class of revenue Officers, by whom any function is to be discharged or any power is to be exercised, is specified by or under this Act, the Government may, by notification, determine the functions to be discharged or the powers to be exercised under this Act by any class of Revenue Officers.
- (2) The manner and procedure for the performance of duties, the exercise and conferment of powers, distribution of business and withdrawal and transfer of cases under this Act, save as otherwise provided by or under this Act, be regulated by the Jammu and Kashmir Land Revenue Act, Samvat 1996 and the rules made thereunder
- (3) The following applications, suits and proceedings shall be disposed of by a Collector:-
 - (a) proceedings under section 56 of the J&K Tenancy Act, Samvat 1980;
 - (b) proceedings under sub-section (2) of Section 68-A of the J&K Tenancy Act, Samvat 1980.
 - (c) proceedings under section 24 of the J&K Big Landed Estates Abolition Act, Samvat 2007;
 - (d) application by an owner or an intermediary that the person who claims to be cultivating the land as a tenant, is not a tenant but a trespasser,
 - (e) all other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/intermediary.
- (4) Any application, suit or proceeding of the kind mentioned in sub-section (3), pending at the commencement of this Act before a Revenue Officer subordinate to a Collector or any Civil or Revenue Court, shall be transferred to the Collector having jurisdiction in the place in which the land in dispute is situate.
- (5) Any application, suit or proceeding relating to cases specified in clause (e) of sub-section (3) which, immediately before the commencement of

the Jammu and Kashmir Agrarian Reforms (Amendment) Act, 1988 were pending before any Civil Court, shall, on such commencement, stand transferred to the Collector having jurisdiction over the area in which the land in dispute is situate, and the Collector shall in his capacity as the appellate or revisional authority, as the case may be, dispose of the same in accordance with the provisions of this Act.”

From the scheme of the Act it is clear that the jurisdiction of the civil court is barred to determine the dispute in respect of the land which falls within the definition of land as defined in section 2 (9) of the Act. These questions are required to be determined by the Collector appointed under the Act.

In the present case the plaintiff-respondent No.1 herein has challenged the sale deed executed by respondent no. 2 in favour of the petitioner herein on the ground that he is tenant in the land. The civil court cannot try this issue and determine the status of the plaintiff-respondent No.1 in a suit as to whether he is tenant in the land in dispute. It is the Collector only who can decide this issue. The plaintiff/respondent-1 herein has rightly preferred an appeal before the Commissioner, Agrarian Reforms Kathua against the order dated 9.9.1989 passed by the Assistant Commissioner (R) Kathua on mutation No. 507 of village Logate Tehsil and District Kathua whereby correction of Khasra Girdawari for the period Kharif, 1971 in respect of

the suit land showing respondent No. 2 herein in cultivating possession of the land. The learned Collector vide order dated 17.8.2002 after accepting the appeal of the plaintiff-respondent No. 1 remanded the case back for de-novo enquiry and passing appropriate orders under law. Thus the matter in controversy between the parties is covered under the provisions of the Act.

The contention of the learned counsel for respondent no. 1 that the power to declare the sale deed as null and void vests to the civil court and not to revenue authority is not acceptable because under the provisions of the Act if the plaintiff-respondent no. 1 is held to be the owner he is entitled to the relief claim by him. Rule 58 of Jammu and Kashmir Agrarian Reforms Rules 1977 gives special powers to the officers mentioned in section 20 of the Act of a civil court in respect of certain matters. Section 20 of the Act also gives power of the civil court in respect of the matters defined therein. Section 27 of the Act has also invested the officers under the Act with all powers to deal with the cases regarding possession, use and occupation of the land between the litigating parties.

The present suit as stated above is between intermediary or recorded owner and party in possession of the land and as such cases are triable by the Collector appointed under the Act.

For the foregoing reasons it can be safely concluded that the Collector or authorities under the provisions of Agrarian Reforms Act, 1976 are invested with all powers to decide the matter in controversy between the parties including the power to issue injunction under the Code of Civil Procedure.

Accordingly, I would hold that the civil court has no jurisdiction to try the suit which is hit by the provisions of Agrarian Reforms Act. The learned trial court committed error in holding that the civil court has jurisdiction to try the suit. Hence this revision petition is accepted and the order dated 19.5.2006 passed by the learned Sub Judge, Kathua is hereby set aside.

Disposed of.

(Vinod Kumar Gupta)
Judge

Jammu
12 .12.2008
Chuni/CS