

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.58 of 2008

Reserved on : September 14, 2012.

Date of Decision : 28.9.2012

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1. Shri Jai Singh son of Smt. Chiri Devi daughter of Shri Tehlu Ram, wife of Girdhari Lal.
  2. Shri Surjeet Singh son of Smt. Chiri Devi daughter of Shri Tehlu Ram, wife of Girdhari Lal.
  3. Shri Pruan Singh son of Smt. Chiri Devi daughter of Shri Tehlu Ram, wife of Girdhari Lal.
  4. Shri Sampuran Singh son of Smt. Chiri Devi daughter of Shri Tehlu Ram, wife of Girdhari Lal.

Residents of village Namala Tehsil Pathankot,  
District Gurdaspur, Punjab.

...Appellants.

-Versus-

1. Shri Balwant Singh son of late Shri Ram Singh,
2. Shri Amrik Singh son of late Shri Ram Singh (deleted),
3. Shri Joginder Singh son of late Shri Ram Singh,
4. Shri Tarsem Singh son of late Shri Ram Singh,
5. Shri Prem Singh son of late Shri Ram Singh,
6. Shri Kuldeep Singh son of late Shri Ram Singh,
7. Shri Sucha Singh son of late Shri Ram Singh,
8. Smt. Shaminder Kaur widow of late Shri Darshan Singh son of late Shri Ram Singh,

All residents of village Kandwal, Tehsil Nurpur,  
District Kangra, H.P.

...Respondents

9. Shri Sujan Singh son of Shri Sandhuri Singh,
10. Shri Kulwant Singh son of Shri Sandhuri Singh,
11. Smt. Neelam Rani daughter of Shri Sandhuri Singh,
12. Smt. Arti Devi daughter of Shri Sandhuri Singh,

Residents of village Dak, Post Office Dhab, Tehsil  
Nurpur, District Kangra, H.P.

13. State of Himachal Pradesh through Financial Commissioner (Appeals), Government of H.P. at Shimla.

...Proforma-Respondents.

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Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No.

For the Appellants : Mr. Ramakant Sharma, Advocate.

For the Respondents : Mr. Rajesh Mandhora, Deputy  
Advocate General, for the State.

Mr. Ajay Sharma, Advocate, for  
respondents No.1 to 8.

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**Justice Sanjay Karol**

Appellants, who were the contesting respondents in the Writ Petition, which was filed by some of the respondents herein, have assailed the impugned judgment dated 5.4.2008, passed by the learned Single Judge of this Court in CWP No.820 of 2006, titled as Balwant Singh and others versus State of H.P. and others.

2. Facts, as they emerge from the record, are as follows. Chiri Devi (which expression also includes her successors-in-interest i.e. the present appellants, who were impleaded after her death) owned and possessed land comprising Khasra Nos.534, 542 and 547, Kitta 3, measuring 18 Kanals 2 Marlas, situate in Tikka Ghandwal, Tehsil Nurpur, District Kangra. Revenue record, i.e. Jamabandi depicted the said position prior to the year 1975-76. It is alleged by Chiri Devi that Ram Singh (which expression also includes his successors-in-interest, i.e. contesting respondents No.1 to 8, who were impleaded after his death) got himself recorded as non-occupancy tenant and mutation No.1045 dated 1.8.1981 was also got attested, by virtue of which he claimed rights of

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Whether reporters of the local papers may be allowed to see the judgment?

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proprietorship, in the said land, under the provisions of the H.P. Tenancy and Land Reforms Act (hereinafter referred to as the Act). This mutation was attested by Assistant Collector 2<sup>nd</sup> Grade.

**3.** Chiri Devi assailed the same by filing suit before the Civil Court. The matter went upto the Supreme Court and eventually this Court returned the plaint to Chiri Devi to be presented before the authority having competent jurisdiction, under the provisions of the Act. Record reveals that Chiri Devi presented the plaint before the Tehsildar-cum-Assistant Collector 1<sup>st</sup> Grade, who had the power to adjudicate the same under the provisions of the Act.

**4.** In terms of order dated 11.11.1996 passed by the Assistant Collector 1<sup>st</sup> Grade, the suit was dismissed, which order was also affirmed by the Additional District Magistrate (Collector), Dharamshala at Kangra, in terms of his order dated 29.9.1997.

**5.** Aggrieved thereof, the present appellants, who are still referred to as Chiri Devi, preferred a Revision Petition before the Divisional Commissioner, Kangra. Eventually, the Additional Commissioner (Appeals), in terms of order dated 11.10.2002, set aside mutation No.1045, dated 1.8.1981, as attested by the Assistant Collector 2<sup>nd</sup> Grade.

**6.** Ram Singh preferred Revision Petition before the Financial Commissioner and vide order dated 23.5.2006, order passed by the Additional Commissioner (Appeals) was set aside. Mutation No.1045 dated 1.8.1981 was also set aside on

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the ground that no proper enquiry was conducted prior to the recording of such entries and as such the matter was remanded back to the Land Reforms Officer for proper enquiry.

**7.** Aggrieved thereof, Ram Singh filed CWP No.820 of 2006, which stands decided in terms of the impugned judgment dated 5.4.2008.

**8.** Learned Single Judge of this Court has partly quashed the order dated 23.5.2006, passed by the Financial Commissioner (Appeals), to the extent it has set aside the entry of mutation. While doing so, the learned Judge has returned the following two findings; (i) There was inordinate delay on the part of Chiri Devi in presenting the plaint before the appropriate authority, whereas the plaint was returned on 12.8.1993 and it was presented on 22.2.1996; and (ii) Chiri Devi had not specifically requested for quashing of order of mutation No.1045 dated 1.8.1981. Hence, the present appeal.

**9.** Having perused the record, we are of the considered view that on both the counts, the impugned judgment needs to be set aside. Findings cannot be said to have been borne out from the record, which has resulted into passing of an erroneous and illegal order.

**10.** Record reveals that plaint which was returned by this Court on 12.8.1993 was actually filed before the authority having competent jurisdiction on 16.12.1993. Record further reveals that the original plaint was amended by Chiri Devi in which mutation No.1045 dated 1.8.1981 was specifically assailed by her.

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**11.** We also find that in the suit, Chiri Devi had specifically pleaded that Ram Singh had encroached upon the land without any right, title or interest and that the entry of mutation was wrongly recorded, inasmuch as there was no relationship of landlord and tenant between them. It may be noticed that Sandhuri Singh (predecessor-in-interest of the proforma-respondents), brother of Chiri Devi was watching her interest. He was impleaded as defendant No.2 in the suit and his legal heirs are the uncontesting respondents in the appeal.

**12.** Civil Courts had specifically held Ram Singh to be a trespasser over the suit land, but however, this fact has not weighed with us at all, for the simple reason that Chiri Devi had withdrawn the suit.

**13.** We find that revenue record does not reveal that Ram Singh was actually inducted as a non-occupancy tenant. He was simply shown to have been recorded as an occupier of the suit land after the year 1970-71. Mere occupation of land by a person, by itself, would not confer any rights of proprietorship under the provisions of the Act. There is nothing on record to show that any rent, as defined under Section 2(15) of the Act, was paid by Ram Singh to Chiri Devi or that Ram Singh was otherwise a tenant on the suit land, as defined under Section 2(17) of the Act. We have perused the entire record and there is no documentary evidence to even prima facie show that Ram Singh was a non-occupancy tenant.

**14.** The Financial Commissioner (Appeals) himself found that entry of mutation dated 1.8.1981 bearing No.1045

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was made without affording adequate opportunity of hearing to the parties concerned. There is nothing on record to show that such findings of fact are not borne out from the record or are not correct. In fact, the procedure for effecting change/correction in Khasra Girdawari/land record, as is so required under Para 9.9 of the H.P. Land Records Manual, was never followed at all before effecting such changes in the revenue record.

**15.** We are conscious that the appellants did not assail order dated 23.5.2006 passed by the Financial Commissioner (Appeals). The parties have been litigating since over three decades and all litigation at some stage must come to an end, more so which is frivolous/vexatious and kept alive only to protect unauthorized possession. Instead of remanding the matter back to the lower authority, the Financial Commissioner (Appeals) should have himself adjudicated the lis between the parties. In these circumstances, we have ourselves looked into the entire record to adjudicate the controversy in issue.

**16.** Consequently, the present appeal is accepted and the impugned judgment is set aside and mutation No.1045 dated 1.8.1981 is also set aside accordingly.

Appeal stands disposed of, so also the pending application, if any.

( Deepak Gupta),  
Judge.

( Sanjay Karol ),  
Judge.

September 28, 2012<sub>(sd)</sub>