

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.: 562 of 2007

Reserved on: 16.11.2016

Decided on: 30.11.2016

State of Himachal Pradesh and anotherAppellants.

Versus

Shakuntla Devi and others ... Respondents.

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the appellants. : Ms. Parul Negi, Dy. Advocate General.

For the respondents : Mr. S.C. Sharma, Advocate.

Ajay Mohan Goel, Judge

By way of this appeal, the State has challenged the judgment and decree passed by the Court of learned Additional District Judge, Solan, in Civil Appeal No. 3-S/13 of 2006, dated 28.04.2006, vide which, learned Appellate Court while accepting the appeal filed by the plaintiffs set aside the judgment and decree passed by the Court of learned Civil Judge (Sr. Divn.) Kandaghat, District Solan, in Civil Suit No. 18-K/1 of 2001 dated 24.10.2005.

2. Brief facts necessary for the adjudication of this case are that respondents/plaintiffs (hereinafter referred to as 'plaintiffs') filed

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

a suit for declaration and permanent prohibitory injunction to the effect that Shivia and Dayal Chand were real brothers and inducted as tenants by Gram Panchayat Satrol, Tehsil Kandaghat in the year 1956 as they were possessing land comprised in Khasra No. 833/8 min, measuring 10-00 bighas, situated in Mauza Satrol, Tehsil Kandaghat, District Solan, H.P. (hereinafter referred to as 'suit land'). Further as per the plaintiffs, the suit land was jointly possessed by Shivia and Dayal Chand. Shivia died in the year 1974 and after his death, he was succeeded by Smt. Prago Devi. Shivia had no children. Smt. Prago Devi who possessed the suit land jointly with Dayal Chand died about nine months back (from the filing of suit) and she being issueless was succeeded by the plaintiffs and proforma defendants. It was further the case of the plaintiffs that after the death of Smt. Prago Devi, suit land came to be jointly possessed by the plaintiffs and proforma defendants, as such, plaintiffs were also tenants in possession of the suit land and the defendants had no right to dispossess the plaintiffs from the suit land except in due course of law. As per plaintiffs, learned A.C. 2nd Grade, Kandaghat had initiated ejection proceedings for dispossessing the plaintiffs from the suit land without issuing any process to the plaintiffs or their predecessor in interest Smt. Prago and /or Shivia alia Shiv Ram. Further, as per plaintiffs, it

had come to their notice that said proceedings had been initiated on the basis of a ejectment order which was passed against Dayal Chand (proforma defendant) by Sub Divisional Collector in case No. 2-8/98 dated 20.01.2001 as well as on the basis of order dated 24.11.1997 passed by A.C. 2nd Grade Kandaghat in case No. 5/13 of 1997 dated 24.11.1997. It was further the case of the plaintiffs that the said order was illegal as at no point of time, plaintiffs or their predecessor in interest Smt. Prago or Shivia were issued notice under Section 163 of the H.P. Land Revenue Act. On these bases, it was urged by the plaintiffs that order dated 20.01.2001 passed by Sub Divisional Collector Kandaghat and order dated 24.11.1997 passed by A.C. 2nd Grade, Kandaghat were illegal, null and void and not binding on the rights, title or interests of the plaintiffs and same cannot be executed against the plaintiffs and the plaintiffs cannot be disposed from the suit land on the basis of said orders. The plaintiffs thus prayed for the following reliefs

“a) a decree for declaration to the effect that the judgments/orders dated 20.01.2001 passed in case No. 2/8 of 1998 by the Sub Divisional Collector Kandaghat and the order dt. 24.11.1997 passed by A.C. 2nd Grade Kandaghat in case No. 5/13 of 1997 are wrong, illegal, null and void ab initio and are not binding on the rights, title and interests of the plaintiffs and the same cannot be executed against the plaintiffs and the plaintiffs

cannot be dispossessed from the suit land which is joint one under the garb of said orders;

b) a decree for permanent prohibitory injunction restraining the defendants from interfering in the suit land, and ousting/dispossessing the plaintiffs from the suit land comprised in Khasra No. 833/min, measuring 10-00 bighas, situated in Mauza Satrol, Tehsil Kandaghat, District Solan, except in due process of law either by themselves or through their agents, servants, assigns, officials whosoever in any manner whatsoever;

c) the costs of the suit.”

3. The suit so filed by the plaintiffs was contested by the defendants. It was denied by the defendants that orders challenged in the civil suit were illegal. It was further mentioned in the written statement that the orders passed by the Revenue Officers were binding upon all concerned as plaintiffs had no right, title or interest over the land in dispute granted to Shivia and Dayal Chand was cancelled by learned Collector, Kandaghat, vide order dated 20.03.1991, on the ground that the land was not put to use by the lessee for the purpose for which it was leased out and Department of Forest had already planted 'Cheel' trees on the said land. It was further mentioned in the written statement that Dayal Chand had also approached the High Court by filing a writ petition which was dismissed as infructuous on 27.05.1993 and, therefore, it was contended by defendants No. 1 and 2 specifically that plaintiffs were estopped to file the suit.

4. On the basis of pleadings of the parties, learned trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled for the declaration that the order dated 20.1.2001 in case No. 2/8/98 by Sub Divisional Collector, Kandaghat and order dated 24.11.1997 passed in case No. 5/13 by A.C. IIInd Grade, Kandaghat, are illegal and void, as alleged? OPP.
- 2. In case, Issue No. 1 is held to be in affirmative, whether the plaintiffs are entitled for the relief of prohibitory/ permanent injunction, as claimed? OPP
- 3. Whether the suit is not maintainable for want of service of legal notice under Section 80 C.P.C? OPD 1 and 2.
- 4. Whether the plaintiffs are not competent to maintain the present suit? OPD 1 and 2.
- 5. Whether the plaintiffs have no locus standi to file the present suit? OPD 1 and 2.
- 6. Relief.”

5. On the basis of evidence led by the parties both ocular as well as documentary in support of their respective cases, the issues so framed were answered by the learned trial Court as under.

“Issue No. 1	: No.
Issue No. 2	: No.
Issue No. 3	: No.
Issue No. 4	: Yes.
Issue No. 5	: Yes
Issue No. 6 (Relief)	: Suit dismissed as per operative part of Judgment.”

6. Learned trial Court while dismissing the suit filed by the plaintiffs held that Ext. DW3/G, copy of Jamabandi for the year 1986-87, demonstrated that five bighas of land for five years i.e. from 1984

to 1989 was leased to Dayal Chand on ₹ 5/- as rent and order of Collector Ext. DW2/C demonstrated that said lease was cancelled by the Collector vide order dated 20.03.1991. Learned trial Court further held that land had not been reclaimed by the lessee, so the lease had been cancelled by the Collector and as Shivia died in the year 1974, therefore, when he passed away, at that time, he was having no right, title or interest over the suit property. Learned trial Court further held that matter was in fact not even agitated in the years between 1979 to 1984 when fresh lease was granted in favour of Dayal Chand by the State of H.P and none of the plaintiffs or proforma defendants had prayed to the revenue agencies that share of Shivia had devolved upon them. It was further held by the learned trial Court that plaintiffs alongwith proforma defendants remained silent during the eviction proceedings regarding the share of Shivia and after the final order was passed by Sub Divisional Collector, Kandaghat in the year 2001, the present suit was filed rather than taking recourse against the said eviction proceedings/orders. Learned trial Court further held that there was no evidence on record to show that Shivia was lessee after the year 1974 over the suit land, therefore, plaintiffs could not agitate the matter regarding eviction qua the land which was allotted to Dayal Chand as Shivia was not in picture after the year 1974. On these

bases, it was held by the learned trial Court that orders dated 24.11.1997 and 20.01.2001, passed by Assistant Collector 2nd Grade and Sub Divisional Collector, Kandaghat respectively were neither illegal nor void. It was further held by the learned trial Court that as Dayal Chand was the only lessee of the suit land after the year 1978, therefore, plaintiffs could not be permitted to agitate their rights under the principles of natural justice also. Learned trial Court also held that after the death of Shivia, initially his wife succeeded him but as she died issueless, therefore, next line of legal heirs, i.e. plaintiffs and proforma defendants succeeded the estate of Shivia. It further held that as Shivia had no right, title or interest in the suit property as only five bighas of land was allotted to Dayal Chand and he had not succeeded Shivia but a new lease was granted in his favour and same stood cancelled by the competent authority in due course of law, therefore, plaintiffs although were legal heirs of Shivia but they had no right, title or interest to agitate the orders dated 24.11.1997 and 20.01.2001, passed by Assistant Collector 2nd Grade and Sub Divisional Collector, Kandaghat respectively. On these bases, learned trial Court dismissed the suit.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs filed an appeal. Learned Appellate Court vide its judgment

and decree dated 28.04.2006 allowed the appeal so filed and reversed the judgment and decree passed by the learned trial Court.

8. While allowing the appeal, it was held by the learned Appellate Court that learned trial Court committed grave error by holding that orders dated 24.11.1997 and 20.01.2001, passed by Assistant Collector 2nd Grade and Sub Divisional Collector, Kandaghat could not be declared illegal, null and void because these orders were passed behind the back of plaintiffs who were not parties to the said proceedings and hence, plaintiffs were not bound by them. Learned Appellate Court further held that learned trial Court committed grave error in declining relief of permanent prohibitory injunction to the plaintiffs as the findings returned by the learned trial Court on issues No. 1 and 2 were contrary to the evidence adduced on record and law point involved therein. While arriving at the said conclusion, it was held by the learned Appellate Court that evidence produced on record by the plaintiffs established that Shivia and Dayal Chand were inducted as tenants over the suit land by Gram Panchayat Satrol and after the death of Shivia, his share was succeeded by Smt. Prago Devi and after her death, estate of Shivia was succeeded by plaintiffs and proforma defendants and they were coming in joint possession over the suit land. Learned Appellate Court further held

that it stood proved on record that no ejectment proceedings were initiated by Assistant Collector 2nd Grade against the plaintiffs nor they were made party in the ejectment proceedings initiated against proforma defendant Dayal Chand. It was further held by the learned Appellate Court that while DW3 proforma defendant Dayal Chand had admitted the claim of plaintiffs, DW1 Govind Ram, Patwari had stated that he had issued certificate Ext. DW1/A, as per which, after the death of Shivia, his property was succeeded by his wife Smt. Prago Devi. It was further held by the learned Appellate court that DW3 had stated that after the death of Shivia in the year 1974, his share was inherited by his wife Smt. Prago Devi and after her death, her share was succeeded by the plaintiffs and the proforma defendants and he also admitted that plaintiffs and proforma defendants were in joint possession of the suit land. Learned Appellate Court further held that plaintiffs were never ordered to be ejected from the suit land by any revenue authority as no ejectment proceeding was initiated against them and further they being in joint possession of the suit land could not be dispossessed forcibly from the suit land by the defendants except in due course of law and on these bases, it allowed the appeal and decreed the suit in the following terms

“The Judgement and decree passed by the learned lower Court is not in accordance with law and is not in

accordance with the pleadings of plaintiffs and defendants. As such, the same judgment and decree is to be set aside and suit of the plaintiffs is to be decreed as a whole. Appeal is as such allowed with no order as to cost. Accordingly the impugned judgment and decree dated 24.10.2005 passed by learned trial Court are set aside and findings are quashed. As such decree for declaration and permanent prohibitory injunction is passed in favour of plaintiffs and against defendants No. 1 and 2. The impugned orders dated 20.01.2001 passed by Sub Divisional Collector Kandaghat and order dated 24.11.1997 passed by A.C-II Kandaghat being illegal, null and void are set aside having no binding effects on the rights of plaintiffs qua the suit land. Consequently the decree for permanent prohibitory injunction restraining defendants from interfering over land or dispossessing the plaintiffs forcibly from suit land bearing Khasra No. 833/8 min, measuring 10 bighas situated at Mauja Satrol, Teh. Kandaghat is passed in favour of the plaintiffs and against the defendants No. 1 and 2.”

9. Feeling aggrieved by the said judgment and decree passed by learned Appellate Court, State has filed this appeal, which appeal was admitted on 16.07.2008 on the following substantial questions of law

“1. Whether after expiry of lease period or its cancellation the legal representatives of original Lessee can claim any right over the leased property by way of inheritance that too without challenging the

cancellation order passed by the competent authorities during the life time of original lessee?

2. Whether the Civil Suit filed by the plaintiffs is sheer abuse of the process of law especially when ejectment orders passed in respect of the lease property have been unsuccessfully challenged upto the Hon'ble High Court by the Original lessee?"

10. I have heard the learned counsel for the parties and also gone through the records of the case as well as the judgments passed by both the learned Courts below.

11. The factum of plaintiffs being in possession of the suit land has not been denied by the defendants/State. It is also not a disputed factual position that the State sought the eviction of the plaintiffs on the basis of orders dated 24.11.1997 and 20.01.2001, passed by Assistant Collector 2nd Grade and Sub Divisional Collector, Kandaghat respectively and the proceedings out of which the said orders have culminated were filed against Dayal Chand and not against plaintiffs. The factum of plaintiffs having succeeded the estate of Shivia after the death of Shivia and thereafter Smt. Prago Devi is also not disputed by the State. However, as per the appellants/State, the suit land was never leased out to Shivia but was only leased out to Dayal Chand and it is on these bases that the State has defended the

orders passed by the revenue authorities which were challenged by way of civil suit filed by the plaintiffs.

12. In my considered view, taking into consideration the fact that plaintiffs were not the party in the eviction proceedings which culminated into orders dated 24.11.1997 and 20.01.2001, passed by Assistant Collector 2nd Grade and Sub Divisional Collector, Kandaghat respectively, by no stretch of imagination, the eviction of the plaintiffs from the suit property could have been sought by the State on the strength of the said orders. These orders having been passed against Dayal Chand were enforceable only against Dayal Chand. It is not the case of the State that the plaintiffs were also impleaded as party in the said eviction proceedings. In these circumstances, it is not understood as to how the orders which have been passed by the revenue authorities in proceedings initiated against Dayal Chand can be enforced against the plaintiffs. When as per the appellants/State, plaintiffs were coming in joint possession of the suit land then it is but obvious that the plaintiffs are to be dispossessed from the suit land by due process of law. Adjudication in eviction proceedings against Dayal Chand cannot be termed to be "due process of law" for the purpose of evicting the plaintiffs from the suit land when the plaintiffs were not party to the said eviction proceedings.

This Court is not even remotely suggesting that the plaintiffs have a right to remain in possession over the suit property on the grounds which have been taken by them in civil suit. However, law demands that even if plaintiffs are trespassers over the suit land and have no right, title or interest over the same, even then they have to be evicted from the same by following the procedure established by the law. Whether after the expiry of lease period or cancellation of the lease deed, legal representatives of the original lessee can claim right over the leased property by way of inheritance is an issue which can be decided by the competent authority once appropriate proceedings are initiated against the plaintiffs before it. Similarly, it cannot be said that civil suit filed by the plaintiffs was abuse of the process of law because the ejectment orders on the basis of which the appellants/State was seeking the ejectment of the plaintiffs were admittedly not passed against the plaintiffs nor were the plaintiffs party in the said ejectment proceedings.

13. A perusal of the judgment passed by the learned Appellate Court demonstrates that it has taken into consideration all these aspects of the matter while concluding that the plaintiffs were never ordered to be ejected from the suit land by any revenue authority as no ejectment proceedings were initiated against them.

Similarly, learned Appellate Court correctly held that plaintiffs being in joint possession of the suit land could not be forcibly dispossessed from the suit land by the appellants/State except in due course of law. However, in my considered view, the declaration given by learned Appellate Court to the effect that order dated 20.01.2001 passed by the Sub Divisional Collector, Kandaghat and order dated 24.11.1997 passed by A.C. 2nd Grade are illegal, null and void and are set aside, is not sustainable because these orders are not illegal, null and void as far as Dayal Chand is concerned though they are not enforceable against the plaintiffs. The findings returned by the learned trial Court that these orders have no binding on the rights of the plaintiffs qua the suit land is the correct finding.

14. Therefore, while upholding the judgment and decree passed by the learned Appellate Court to the extent that decree for declaration and permanent prohibitory injunction is passed in favour of the plaintiffs and against defendants No. 1 and 2 restraining them from interfering over land or dispossessing the plaintiffs from the suit land except in due process of law, decree passed by the learned Appellate Court to the extent that order dated 20.01.2001 passed by the Sub Divisional Collector, Kandaghat and order dated 24.11.1997 passed by A.C. 2nd Grade are illegal, null and void is set aside. It is

held that these two orders have no binding effect on the rights of the plaintiffs qua the suit land and that the plaintiffs cannot be forcibly dispossessed from the suit land except by following the procedure established by law. Substantial questions of law are answered accordingly. With the said modification in the judgment and decree passed by the learned Appellate Court, appeal is partly allowed to the extent mentioned hereinabove. No order as to costs. Pending miscellaneous application(s), if any, also stands disposed of.

**(Ajay Mohan Goel)
Judge**

30th November, 2016.
(narender)