

H.P. BOARD OF DEPARTMENTAL EXAMINATION

Departmental Examination for IAS/HAS

~~NOVEMBER~~ 2019

Paper : ~~5~~—Revenue Case, ~~XXXXXXXXXXXX~~

TIME ALLOWED: Three Hours

MAXIMUM MARKS: 100

- Note. 1. Bare Act, Rules and Manuals may be consulted.
2. Quote relevant provisions of the Acts, Manuals and Rules to support answers.

Question 1 :

(a) A Suit for ejectment was brought by Sarvshri Hem Chand etc. Plaintiffs against Shri Didoo- Defendant in court of Assistant Collator 1st Grade under section 58 (3)(d) of the H/P/ Tenancy and Land Reforms Act, 1972. The brief facts of the pleadings of both parties are given below:- On the basis of pleadings;

- i. Frame the issues. (20 Marks)
- ii. In the light of the evidence and arguments given below, give findings on each issue and write the judgment accordingly. (40 Marks)

PLAINT

1. That the petitioners were owners to the extent of half share and the defendant owner to the extent of another $\frac{1}{2}$ share of Khasra Nos. 159 to 172 area 2-1-3 Bighas of land in Mohal Rampur and that the defendant was also entered as non-occupancy tenant of the $\frac{1}{2}$ share in the ownership of the plaintiffs.
2. That the defendant failed to cultivate the land comprising Kh. Nos. 159 to 172 for the period Rabi 1970 to Kharif 1974.
3. That the defendant was to pay $\frac{1}{4}$ th share to the produce of his tenancy as per the agreement recorded to the effect in the Jamabandi.
4. That as per Naksha Normal Rate Bazari Rate rent of Rs.500 would have been payable, and cultivation been done in the customary manner.

5. The Plaintiffs prayed that the defendant be ordered to pay Rs.500 with cost and be ejected from Khasra Nos. 159 to 172 under section 34 (1)(b) of the Act.

WRITTEN STATEMENT:-

1. Para 1 of plaint denied to the extent that defendant has now gained ownership rights on the remaining half share, as a consequence to operation of section 104 of the Tenancy & Land Reforms Act, 1972, from 1-1-75.
2. Para 2 denied.
3. Para 3 admitted. The 1/4th share has been paid to the owners.
4. Para 4 not admitted due to lack of knowledge.
5. Para 5 denied. The defendant has paid the rent. Even if he has not, since he has now gained ownership, the present suit cannot be brought against him.

Even if it was held that the plaintiffs were entitled to all the relief of para 5 of the plaint, this could not be given effect to, unless partition of the ownership was carried out on the land. Therefore, the present suit was pre-mature to the extent that the plaintiffs would first have to partition the land and then apply under section 58(3)(d) of the H.P. tenancy and Land Reforms Act.

It was prayed that since the suit had been brought solely with the view of depriving the defendant from getting ownership of the land in his tenancy, it be dismissed with costs.

REPLICATION

It was admitted that the ownership of the land in the tenancy of the defendant had now been mutated in favour of the defendant as owners. However, all this was done in connivance with the Revenue authorities because the defendant knew that the plaintiffs were about to bring present suit against the defendant.

That the petitioners were entitled to all the reliefs mentioned in the plaints since the suit related to the period prior to conferment to ownership with right.

That there was no need for partition since the question was not of ownership, and this plea was being taken by the defendant only to delay proceeding,

- (b) Evidence was led by both parties. For the Plaintiffs PWs. 1, 2 and 3 all residents of Rampur stated that Kn. Nos. 159 to 172 had not been brought under cultivation for the period rabi 1970 to Kharif 1974. PW. 4 (Office Kanungo) produced record to the effect that as per Naksha Normal and Bazari Rate rent payable was Rs.500. The plaintiffs also produced copy of Jamabandi for the year 1970 showing the plaintiffs and defendant, each, owner to the extent of $\frac{1}{2}$ share, the defendant being entered in the possession column of the Jamabandi as "KHUD KAST, DIDU HISSADAR MALIK NISAF, WA GAIR MAURUSI NISF MIN JANIB DIGAR HISSADARAN".

Defendant produced no witnesses, but presented copy of the latest jamabandi in which, in the remarks column, entry regarding granting of ownership right of the remaining $\frac{1}{2}$ share due to operation of section 104 of the Tenancy & Land Reforms Act, 1972, was entered by the Patwari along with number and date of the mutation attested in this regard.

Arguments were heard from counsels for both side. Counsel for plaintiffs reiterated the pleadings and argued that since on the basis of oral and documentary evidence it was proved that the defendant during the period of this tenancy was liable under section 34(1) (b) of the Tenancy & Land Reforms Act, 1972, the fact, that he was subsequently granted ownership made no difference to his liability. The defendant was not at all eligible for ownership once a court came to the conclusion that as tenant the defendant was liable for ejectment.

For the defendant the pleas made in the written statement were again set forth and it was further argued that even if the Court came to the conclusion that the defendant was liable under section 34(1)(b), it could instead of making a decree, pass an order under section 41(1) of the Tenancy and Land Reforms Act, 1972.

Question No.2

Smt. Rodi widow of Shri Sabha, r/o village Patilon, Tehsil Poanta Sahib Distt. Sirmaur executed a Will in respect of her movable and immovable property on 01.09.1983, in favour of Shri Rattan Lal, petitioner. This will was got registered before the Sub-Registrar, Paonta Sahib on 02.09.1983. on the basis of this Will, after the death of Smt. Rodi in June, 1984, mutation No.610 was entered in favour of Shri Rattan Lal by the Patwari in the register of mutation. Later on, the respondents Shri Rikhia and others reportedly produced an unregistered will dated 29.08.1983, executed in their favour and in favour of Shri Rattan Lal, petitioner by the said Smt. Rodi. At the time of attestation both the will were examined by the Assistant Collector II Grade Poanta Sahib who came to the conclusion that the both the Wills were disputed and needed adjudication by a competent of court of law. Since he could not defer the attestation of mutation, he attested the mutation on 16.05.1986 in favour of Shri Rattan Lal, petitioner and all the respondents.

Feeling aggrieved by this order, Shri Rattan Lal preferred an appeal before the Sub-Division Collector Poanta Sahib.

Based on the above facts, decide the following as an appellate authority (Sub-Divisional Collector) ;

1. Frame the issues (15 Marks)
 2. Give findings on each issue and write the order accordingly. (25 Marks)
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