
(2015) 04 SHI CK 0073

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal Nos. 557 of 2001 and 162 of 2002-B

Bhai Ashok Singh and Others

APPELLANT

Vs

Lalita and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 19 Rule 19, Order 19 Rule 2, 100

Evidence Act, 1872 — Section 3

Citation : (2015) 04 SHI CK 0073

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R.L. Sood, Senior Advocate and Arjun Lall, for the Appellant; Ajay Kumar and Dheeraj K. Vashista, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanjay Karol, J.—In these appeals, filed under Section 100 of the Code of Civil Procedure, appellant(s) (in both the appeals) have assailed the findings of fact, some of which are concurrent, so returned by the Courts below.

2. Plaintiff Ashok Singh filed a suit, seeking declaration to the effect that as owner he is in exclusive possession of the suit property, comprising of road, garage etc. built upon Khata Khatauni Nos. 13/14 min., Khasra Nos. 12 and 13, situate in Chhota Shimla. The defendants arrayed were Rani Padamjit Singh (defendant No. 1), Smt. Lalita (defendant No. 2), Smt. Anita (defendant No. 3) and Smt. Rama (defendant No. 4), all legal heirs of late Raja Padamjit Singh, original owner of the property commonly known as Strawberry Hills. Plaintiff pleaded occupation, over the suit property, for over a period of 50 years. Hence having perfected title by way of adverse possession.

3. Written statement, though filed on behalf of all the defendants but verified and signed only by Smt. Lalita Khanna, disputed the factual position, so averred by the plaintiff.

4. Plaintiff reiterated its stand in the replication.

5. With the completion of pleadings in the suit filed on 24.06.1989, trial Court framed the following issues for consideration.

"1. Whether the plaintiff is exclusive owner in possession of suit land as alleged? If so its effect? OPP.

2. Whether the plaintiff is entitled to relief of declaration and injunction as alleged? OPP.

3. Whether the suit in present form is not competent? OPD.

4. Whether the plaintiff has no locus standi to file this suit? OPD.

5. Whether the plaintiff is estopped to file this suit as alleged? OPD.

6. Relief."

6. In order to prove its case and discharge the burden of onus, plaintiff examined himself as PW.5 and five other witnesses. Sh. Naresh Sood (PW.1), was examined to prove the factum of construction of garage and its assessment for the purpose of Municipal (House) Taxes and payment thereof. Sh. Ramesh Chand (PW.2), was examined to prove the Plan, so sanctioned by the Municipal Authorities for carrying out the alterations and additions in the garage as also the house, already in existence. Sh. Lekh Ram (PW.3), was examined to prove the record of the Municipal Corporation. Sh. Purshotam Sharma (PW.4), was examined to prove the affidavit, so filed by Rani Padamjit Singh (defendant No. 1) in the proceedings before this Court. Sh. Prithpal Singh (PW.6) and Sh. Rupinder Singh (PW.7), were examined to also prove the existence of the garage and uninterrupted and peaceful possession and usage of the entire suit property.

7. On the other hand, no evidence other than the deposition of Smt. Lalita (defendant No. 2) was led by the defendants.

8. Appreciating the testimonies of the witnesses and the other evidence on record trial Court, holding that predecessor-in-interest of the plaintiff, was in an uninterrupted and continuous use and occupation of the suit property including the garage, by answering the issues in favour of the plaintiff, decreed the suit as under:--

"Thus, for the reasons recorded for deciding the aforesaid issues, the suit of the plaintiff succeeds, therefore, a decree for declaration that the plaintiff is owner of the suit property alongwith a decree for permanent injunction, restraining the defendants from interfering in the possession of the plaintiff is passed in favour of the plaintiff and against the defendants....."

9. In an appeal preferred by the defendants, judgment and decree dated 30.03.1995, passed by Sub Judge, 1st Class, Shimla, District Shimla, in Case No. 43/1 of 90, titled as Sh. Ashok Singh Versus Rani Padamjit Singh and others, stands partly reversed by the Additional District Judge, Shimla, H.P., in terms of

impugned judgment and decree dated 08.08.2001, in Civil Appeal No. 55-S/13 of 1995, titled as Rani Padamjit Singh and others Versus Shri Ashok Singh, holding the plaintiff entitled only to a decree of injunction. Court set aside the findings, judgment and decree of declaration, with regard to plea of ownership by way of adverse possession.

10. Appeals stand admitted on the following substantial questions of law:--

"RSA No. 162 of 2002

"1. Whether the impugned judgment and decree is liable to be set aside as the appellate court below has ignored the pleadings of the parties and has travelled beyond the same?

2. Whether the impugned judgment and decree is liable to be set aside as the trial Court has mis appreciated and ignored evidence, more particularly in the form of written documents such as PW.2/A which clearly went to the root of the case and which showed that the garage in question has been constructed by the appellant's predecessor-in-interest some time in 1951 and whether the impugned judgment and decree of the learned appellate court has failed to record any findings on the said is garage?

3. Whether the appellate Court has erred in law in not drawing adverse inference against respondents No. 1, 3 and 4 for their failure to appearing the witness box or to make any statement in support of the false stand put by them?"

RSA No. 557 of 2001

"1. Whether the learned Additional District Judge, Shimla, in the facts and circumstances of the case, has committed an error of law by passing a decree for permanent prohibitory injunction in respect of the suit property after having dismissed the claim of the Plaintiff-Respondent of ownership and adverse possession with respect to the suit property?"

11. Having perused the material on record and heard learned counsel for the parties, it cannot be said that the Courts below committed any error in passing a decree for Permanent Prohibitory Injunction with respect to the suit property. It also cannot be said that the lower Appellate Court ignored the pleadings of the parties or travelled beyond the same. Plaintiff's suit was not only with regard to his title of ownership, but also for the relief of injunction. There is no bar in passing a decree for injunction.

12. In the light of the decision rendered by the apex Court in Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Another, (2014) 2 AD 364 : (2013) 4 RCR(Civil) 703 : (2013) 11 SCALE 564 : (2014) 1 SCC 669 , findings returned by the lower Appellate Court, dismissing the plaintiff's suit qua relief for declaration of ownership by way of adverse possession, cannot be said to be erroneous, illegal or bad in law.

13. Reliance on paragraph 6 of earlier decision in P.T. Munichikkanna Reddy and

Others Vs. Revamma and Others, AIR 2007 SC 1753 : (2007) 6 JT 86 : (2007) 6 SCALE 95 : (2007) 6 SCC 59 : (2007) 5 SCR 491 : (2007) AIRSCW 2897 : (2007) 3 Supreme 751 is misconceived in law, in view of the subsequent decision rendered by a Coordinate Bench of the same Court.

14. From the evidence on record and more particularly that of Naresh Sood (PW.1) and Ramesh Chand (PW.2), it is evident that plaintiff alongwith others and not the defendants, was in possession of the garage. From the documentary evidence, so proved by the officials of the Municipal Corporation, it is evident that the garage, is in possession of the plaintiff and two other persons who are not party to the suit, but then defendant No. 2, who stepped into the witness box, does not dispute the fact that plaintiff alone is in possession of the same. In fact she goes to corroborate the ocular evidence so led by the plaintiff, with regard to his exclusive possession over the garage as also the road exclusively leading to his house so owned and possessed by him. It has also come on record, as has been so held by the trial Court, that defendants as also the owners and the residents of the adjacent/adjoining property have their different and separate access. Thus, findings with regard to exclusive possession and user of the road by the plaintiff, so returned by the Courts below, cannot be said to be perverse, illegal or not borne out from the record. In fact, as is evident from the Municipal record, garage stood constructed from the time of predecessor-in-interest of the plaintiff.

15. Significantly, though the trial Court relied upon the affidavit (Ex.PW.4/A), so filed by Rani Padamjit Singh (defendant No. 1), in a Civil Writ Petition filed before this Court, but however, lower Appellate Court, ignored the same by relying upon the provisions of Order 19 Rules 1 and 2 of CPC as also Section 3 of the Indian Evidence Act, 1872. Affidavit (Ex.PW.4/A) stands proved through the testimony of Purshotam Sharma (PW-4), a Clerk from the High Court. Provisions of Order 19 would have no application in the given facts and circumstances. Lower Appellate Court erred in holding so. The affidavit (Ex.PW.4/A) was a mere document and not an affidavit in the proceedings, filed by any of the parties to the lis. Affidavit, so filed by Rani Padamjit Singh, is legally admissible in evidence, for having been proved, in accordance with law, by a duly authorized and competent person. Original file from the High Court was summoned and only thereafter, its copy was taken and placed on the record and exhibited. This document, unambiguously admits the plaintiff to be in exclusive possession, uninterrupted and continuous, over the suit property, including the garage. It is perhaps for this reason that the said defendant chose neither to sign the written statement nor stepped into the witness box. Thus, findings with regard to the plaintiff's uninterrupted and continuous use, occupation and possession over the suit property, so rendered by the courts below, cannot be said to be perverse, illegal, erroneous and not borne out from the record.

16. Mr. Arjun Lall, learned counsel, invites attention to the decision rendered by a Coordinate Bench of this Court in RSA No. 489 of 2014-C, titled as Sher Singh

and others Versus Virender Singh and others, on 31.10.2014, to the following effect:--

"Though, the suit is not maintainable, it needs to be clarified that in case the plaintiffs are in possession of the suit property, they cannot be disturbed except by due process of law and it further needs to be clarified that in any future litigation it shall be open to the plaintiffs to plead in defence that they had become owners of the property by way of adverse possession. This clarification has been necessitated on the basis of the following observations of the Hon"ble Supreme Court in Gurdwara Sahib's case (supra) which reads thus:--

"10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant, had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed."

17. It stands clarified that even though no decree for declaration with regard to the title can be passed, on the basis of plea of adverse possession, as is so correctly held by the lower Appellate Court, however since plaintiff is in possession of the suit property, in any future litigation, it shall be open for him to plead in defence, that he has acquired the title over the suit property by way of adverse possession.

18. For the aforesaid reasons, both appeals stand disposed of and substantial questions of law answered accordingly. Pending application(s), if any, also stand disposed of.