

(2011) 06 SHI CK 0200

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 207 of 2001

Chamel Singh

APPELLANT

Vs

Santosh Kohli and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0200

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Heard learned Counsel for the parties and have gone through the record. It is with reluctance that I have to pass the order which is now proposed by me. The learned first Appellate Court being the final court of fact was duty bound and should and ought to consider the facts urged before it as also forming the basis and foundation of the claim of either parties. In this case what I find is that the learned District Judge has been preemptive and presumptive without touching the real controversy between the parties.

2. The Appellant herein was the Plaintiff before the learned trial Court, who claimed a decree for declaration i.e. he is owner in possession of the suit land as described in the plaint. The learned trial Court after a detailed consideration of the evidence and the case law, upheld the "Will" and negatived the defence of the Respondent herein that he has become owner of the suit land by way of an oral sale.

3. In appeal preferred before the learned District Judge, short shrift has been given to the real controversy between the parties on presumptions and on principles of law which are unsound and untenable. What the learned District Judge was required to do was not only to have considered whether the Respondent herein has a better title but to effectually determine whether he has such a title.

4. In these circumstances, the case is remanded to the learned District Judge,

Nahan for consideration afresh in accordance with law. The learned court shall give a finding on the points as urged before it. I note with sadness that this is one of those cases in which I have to pass an order of remand since I am left with No. other option. If I had given a finding in the second appeal, the right of the parties to prefer another appeal to this Court would have been foreclosed. The appeal is disposed of.

5. Let the records of the case be sent back to the learned District Judge, who shall re-admit the file on his record and shall dispose of the case as expeditiously as possible. The judgment and decree of the learned appellate Court is quashed and set aside.

6. The parties shall appear before the learned appellate Court on 11th August, 2011.