

(2012) 09 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 2 of 2005

Chandermani and Chuni Lal

APPELLANT

Vs

Karam Singh, Led Ram, Khekh Ram and Mohar Singh

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2012) 09 SHI CK 0017

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Advocate : G.R. Palsara, for the Appellant; M.S. Guleria, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is a regular second appeal u/s 100 C.P.C. filed by the appellants (hereinafter referred to as the "plaintiffs") against the judgment and decree dated 25.11.2004 passed by the learned District Judge, Mandi vide which judgment and decree dated 17.1.2003 passed by the learned Civil Judge (Junior Division) Chachoit at Gohar, Distt. Mandi, decreeing the suit of the plaintiffs was set-aside and consequently the suit of the plaintiffs was dismissed. Briefly stated, the facts of the case are that the appellants (hereinafter referred to as the plaintiffs) filed a suit for damages and injunction alleging that the land comprised in khasra No. 1115/949 and 1116/979, measuring 2-18-8 bigha was allotted to the plaintiff as Natour and in the year 1967, the possession was also delivered to him and since then the plaintiff is in possession of the suit land. It was further alleged that on 5.12.1997, defendants trespassed into the land of the plaintiff and committed mischief by cutting 30 apple trees which were of the age of more than 12 years. The matter was reported to the police and the land was found in possession of the plaintiff and thus the plaintiff alleged that they suffered a loss of Rs. 25,000/- but, claimed damages amounting to Rs. 10,000/- only. The plaintiff also pleaded that since the defendants are interfering in his possession over the suit land the relief of injunction be also granted in favour of the plaintiff

and as against the defendants.

2. Defendants pleaded that the land was allotted to the plaintiff as Notour but he never came in possession of the part of the land and the revenue entries showing him in possession are null and void. The defendant pleaded that he had also applied for grant of land in the year 1969 since he was possessing the land. He also pleaded that land measuring 7-19-3 bigha was granted in favour of the defendant comprised in khasra No. 1130/949/1 and defendant had raised orchard over his own land as well as on part of the suit land. Defendant No. 1 also took a plea of adverse possession in regard of part of the suit land and pleaded that since the plaintiff was not in possession he is not entitled to the relief of damages and injunction.

3. On the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the plaintiff is owner in possession of the suit property, as alleged? OPP

2. Whether the defendants have caused loss to the plaintiff to the tune of Rs. 10,000/- and is liable to get damages to the tune of Rs. 10,000/-from the defendants, as alleged? OPP

3. Whether the defendants have become owners in possession of the suit land by way of adverse possession, as alleged ? OPD

4. Parties led their evidence and the learned trial Court vide its impugned judgment held that the plaintiff was only entitled to the relief of permanent injunction and the relief of damages was not granted in favour of the plaintiff.

5. The appeal filed by the defendant was allowed and the suit was consequently dismissed. Being aggrieved, the plaintiff has come up by way of second appeal.

6. I have heard the learned counsel for both the parties and have gone through the record of the case.

7. The appeal in question was admitted by this Court on the following substantial questions of law:-

Whether the learned First Appellate Court has misread, misconstrued and misinterpreted the oral as well as documentary evidence of parties especially Ext. PW-5/A, Ext. PW5/D, PW-3/A, DW-5/A and statement of PW-1 which has caused miscarriage of justice to the appellants?

8. On appraisal of the evidence led by the plaintiff, I am of the opinion that there is no merit in the appeal filed by the plaintiff for the reasons given below and as such the appeal deserves to be dismissed accordingly.

9. The plaintiff had claimed that his land and land of the defendant who were allotted Natour land are not adjoining to each other, but, the learned District Judge after referring to the evidence had clearly concluded that the land of the

plaintiff and defendants are adjoining and there is a path also in between the lands. It was also observed that the plaintiff had not come up with clear facts. Reference was made to the statement of the plaintiff that the boundary of the suit land and the land of the defendant do not touch each other but on the basis of other evidence on record, it was concluded that the boundary of land of both the parties touch each other and there was also reference to the path existing in between these lands. A reference was also made to the case of the defendants that some fields of the plaintiff and the land of the defendants are on one side of the road, whereas the plaintiff is also having some land on other side of the road and the land adjacent to the land of the defendants is in possession of the defendants.

10. Learned counsel for the plaintiff during the course of the arguments has placed reliance upon the note prepared by the Police officer Ex. PW3/A in which he had made a reference to the fact that he had prepared a site plan showing the possession of the land at the spot. The said document can not be relied upon so as conclude as to which of the parties are in possession since it is not based upon any report of the Revenue Officer taken at the spot. It is clear from a perusal of the record that the plaintiff never obtained any demarcation of his land and that of the defendants before filing the suit for injunction. Before a party comes to the Court claiming the relief of injunction in regard to the land in question he should be clear of the land, its situation and which particular portion is in his possession so that the other party can be restrained by granting the relief of injunction in favour of the plaintiff. The plaintiff did not take any demarcation from a competent Revenue Officer and is not aware of the land which was allotted to him and he took possession and accordingly there is a dispute in between the parties over part of the land which the defendant claims to be in his possession. The mere fact that the copy of jamabandi Ex. PW5/A shows the possession of the plaintiff over the suit land does not in itself establish that the plaintiff is in possession at the spot since no proper demarcation had taken.

11. The relief of injunction is a discretionary relief and until and unless the Court is satisfied about the possession of the plaintiff over the suit land, the relief of injunction can not be granted in his favour. The learned District Judge has rightly declined to grant relief of injunction in favour of the plaintiff. In view of above observation, it follows that since the plaintiff has failed to establish his exclusive possession over the suit land, he was not entitled to the discretionary relief of injunction. However, the plaintiff is at liberty to apply for demarcation to competent Revenue Officer take demarcation and then file the suit for injunction or possession as he may be advised. There is no merit in the appeal filed by the appellants which is accordingly dismissed. Both the parties are left to bear their own costs.