
(2014) 03 SHI CK 0102
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 510 of 2002

Chet Ram

APPELLANT

Vs

Ishwari Dass Sharma and Others

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100

Citation : (2014) 03 SHI CK 0102

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : V.D. Khidtta, Advocates for the Appellant; G.D. Verma, Senior Advocate and B.C. Verma, Advocates for the Respondent

Judgement

Tarlok Singh Chauhan, J.—This appeal is directed against judgment, decree dated 12.8.2002 passed by learned Additional District Judge, Shimla Circuit Court at Rohru in Civil Appeal No. 65-s/13 of 2001 whereby he affirmed the judgment, decree dated 28.2.2001 passed by learned Sub Judge Ist Class, Court No. 2, Rohru in Civil Suit No. 124-1 of 1996/137-1 of 1998.

2. The appellant i.e. plaintiff had filed a suit for permanent prohibitory injunction, restraining the respondents/defendants No. 1 to 4 from interfering over the land comprised in khata khatoni No. 19/30 min, khasra No. Sabik 97 min and 490, 491 hall, situate in Chak Parsa, Tehsil Rohru, Distt. Shimla by way of cutting trees, creating path and committing mischief to the suit land in any manner. It was also averred that the plaintiff/appellant was the son of defendant No. 8 Hari Saran who alongwith defendants No. 5 to 7 was recorded in possession of the suit land. It was alleged that the defendant No. 8 infact was exclusive owner of the suit land on the basis of family partition which took place long back amongst the defendants No. 5 to 8. The suit land had fallen in the share of defendant No. 1, when defendant No. 8 later on separated his sons including plaintiff in the year 1992.

3. It was further alleged that since the defendant No. 8 was alive, the revenue

entry continued to appear in his name. There were "Kail" trees over khasra No. 491 and fruit bearing trees over khasra No. 490 which was under his cultivation. It was averred that defendant No. 1 is the owner of his own land which is about 10 to 15 meters away from the boundary of plaintiff/appellant. But he has encroached upon the government land and had fixed boundary with the plaintiff forcibly which had posed threats of dispossession to the plaintiff/appellant. The defendant No. 1 was serving in the Border Security Force (BSF) as Deputy Superintendent of Police and was openly carrying out threats not only to the plaintiff/appellant but even to his family members.

4. It was also averred that the defendant with the passage of time constructed a house over the government land and had demolished the old path and had fixed boundaries with the land of the plaintiff/appellant. In fact the defendant wanted to carve out a new path from the suit land and there existed no path in the past. The defendant's few days prior to filing of the suit had cut and remove one Kail tree from the suit land without the consent of the plaintiff/appellant. Hence, the suit was filed for permanent prohibitory injunction.

5. The suit was resisted and contested by the defendants/respondents No. 1 to 4, who filed a joint written statement and took preliminary objections inter alia of maintainability, locus standi and the suit being misconceived and wrongly drafted. On merits, it was alleged by defendants/respondents that the plaintiff/appellant was not in possession of the suit land and there was nothing on record to show that the land had been allotted to the plaintiff/appellant by way of family arrangements. Since the plaintiff/appellant had never taken any demarcation of his land, hence, there was no question of over-lapping of the land or interference with the suit land. It was averred that plaintiff/appellant had not approached the Court with clean hands. The defendants/respondents already had their own path existing over their own land which they had been using as a matter of right for the last more than 25 years to their residential house, therefore, there was no question of creating any new path. It was also averred that suit has been filed just to harass the defendants/respondents without any cause.

6. The plaintiff/appellant filed replication to the written statement filed by defendants/respondents wherein the plaintiff/appellant re-affirmed the allegations made in the plaint and denied those of the written statement.

7. The defendants/respondents No. 5 to 8 did not appear or contest the suit and were thus, proceeded ex parte, vide order dated 31.8.1996. The learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to injunction? OPP
2. Whether the suit is not maintainable in the present form? OPD.
3. Relief.

After recording the evidence and appreciating the same, the learned trial Court dismissed the suit. The plaintiff/appellant preferred appeal against the decree

and it is judgment passed by the learned trial Court before learned Addl. District Judge, Shimla, who has been pleased to dismiss the appeal and against this judgment and decree the plaintiff/appellant preferred the present appeal.

8. This Court on 29.11.2002 was pleased to admit the appeal on following substantial questions of law:-

2. Whether the appellant/plaintiff entered as co-sharer in the revenue record is entitled for the injunction prayed in the plaint qua his land against the respondents/defendants No. 1 to 4?

5. Whether family partition is required to be proved for the purpose of granting injunction specially when the appellant/plaintiff is entered as co-sharer in the revenue record?

9. I have heard the learned counsel for the parties and with their able assistance gone through the records. Since both the above questions of law are interlinked and interconnected, I proceed to decide the same jointly.

10. In the present case the plaintiff/appellant has alleged that he is son of defendant No. 8 Hari Saran, who is recorded as co-owner alongwith Puran Chand, Gian Chand, Ram Saran etc. He has alleged that in the family partition which took place long back between defendants/respondents No. 5 to 8, the suit land had fallen to the share of his father i.e. defendant No. 8. In the year 1992 the defendant No. 8 had carried out partition of this land and allotted the suit land in favour of the plaintiff/appellant, but the factum of plaintiff/appellant being in possession of the suit land was not reflected in the revenue record since the defendant No. 8 was still alive. This plea to my mind is totally unsubstantiated and not borne out from the record of the case. There is no evidence on record to suggest that any partition had taken place between defendants/respondents No. 5 to 8 inter se and the story of subsequent partition between defendants/respondents No. 5 to 8 and the plaintiff appears to be concocted and manipulated and created only for the purpose of filing the suit and claiming the relief prayed therein.

11. It is clear from the revenue record which has been relied upon by the plaintiff/appellant that the name of Hari Saran defendant No. 8 alongwith other co-owners are duly recorded in the jamabandi for the year 1982-83 Ex.PC. Prior to this in the jamabandi for the year 1976-77 Ex.PE, the suit land i.e. khasra No. 97, measuring 4 bigas 17 biswas is recorded in the name of Hari Saran 1/2 share while remaining 1/2 share is recorded in the name of Ram Saran, Puran Chand, and Gian Chand. During the Course of the settlement in the year 1982-83, Missal Haquiat Ex.PF was prepared wherein the old khasra No. 97 min was bifurcated into new khasra Nos. 490 and 491, measuring 0-27-35 hectors. Even in this jamabandi, there is no mention whatever about the family partition between defendants/respondents No. 5 to 8 or relinquishment of the suit land by the defendant No. 8 Hari Saran in favour of his son Chet Ram i.e. plaintiff/appellant. There is neither any oral nor documentary evidence available on record to

support and substantiate this plea.

12. The plaintiff has miserably failed to prove his title qua the suit land. The learned counsel for the plaintiff/appellant has argued that when the defendant No. 8 had died during the pendency of the proceedings, accordingly the status of plaintiff/appellant who happened to be the son of defendant No. 8 stands improved as the plaintiff/appellant has now been recorded as co-owner of the suit land. I am afraid that such plea is totally misconceived and has been raised simply to be rejected. The plaintiff/appellant is claiming himself to be exclusive owner of the suit land on the basis of family partition regarding which as observed earlier there is no evidence available on the record. Merely because, after the death of defendant No. 8, the plaintiff/appellant has succeeded to his estate on the basis of mutation No. 48 Ex.PZ, the status of the plaintiff cannot be held to be improved. The fact still remains that the name of plaintiff/appellant is yet to be recorded as exclusive owner of the suit land. In fact, a close reading of mutation No. 48 would go to show that the share of Hari Saran was sanctioned in favour of all his sons namely Chet Ram, Jia Lal, Lachhman Dass, Guru Dutt, Sawrupa Nand, Sanam Ram, as well as daughters Smt. Dev Kali, Kalam Pati and widow Smt. Surat Devi.

13. Therefore, on the basis of mutation No. 48 Ex.PZ, it can safely be concluded that it was not the plaintiff/appellant alone who succeeded to the share of late father Hari Saran. Even otherwise, it is settled principle of law that legal rights of the parties are to be seen on the date of filing of the lis and it is incumbent upon the Court to determine the dispute on the basis of such right and pass decree in accordance with the right so claimed. No doubt, the Court has powers to take note of subsequent event and grant relief on certain settled principles of law. However, I need not to deal those questions as these do not arise for consideration in the present appeal.

14. The learned trial Court as also the learned appellate Court has correctly appreciated the oral and documentary evidence available on record. The learned lower appellate Court has not only agreed with the view taken by the learned trial court but has discussed in detail the pleadings of the parties and appreciated afresh the entire evidence led by the parties even though there was no requirement in law restate the effect of the evidence or reiterate the reasons given by the trial Court; and even an expression of general agreement with reasons given by the trial Court decision which was under appeal would have ordinarily sufficed.

15. In Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., wherein the Supreme Court has held as follows:

"15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did

not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate court affirming the findings of the trial Court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, . We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das Vs. Smt. Narayanibai (Deceased)* by Lrs. and Others, . The rule is - and it is nothing more than a rule of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*, . Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final court of facts; pure findings of fact remain immune from

challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

16. Even if, the appellant/plaintiff is assumed to be in possession as co-sharer even then he is not entitled to injunction since he has not been able to prove his case as set out in the plaint. Moreover, this plea of the appellant/plaintiff being a co-owner runs counter to the plea set up in the suit, wherein he has claimed himself to be in exclusive possession pursuant to family partition. Even on merits the appellant/plaintiff has failed to prove his case and therefore, the plaintiff is held not entitled to a decree of injunction and both the questions are answered accordingly.

17. As a result of my findings herein above, the appeal filed by plaintiff/appellant is dismissed and consequently, the judgments and decrees passed by the learned courts below are hereby affirmed, leaving the parties to bear their own costs.