
(2011) 04 SHI CK 0322

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 307 of 1995

Dayal Devi Batra

APPELLANT

Vs

Urmila Mathur

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 04 SHI CK 0322

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This Regular Second Appeal is directed against the judgment and decree dated 25.2.1995 passed by the learned District Judge, Solan whereby he confirmed the judgment and decree dated 20.12.1991 passed by the learned Senior Sub Judge, Solan dismissing the suit of the Plaintiff.

2. The Appellant (hereinafter referred to as the "Plaintiff") filed a suit claiming that she had purchased Khasra No. 4002/334/2 measuring 9 biswas in village Sair from its previous owner Karam Chand Suri vide registered sale deed dated 16.11.1977. According to the Plaintiff, during the settlement operations, the aforesaid Khasra number was given new Khasra Nos. 1487, 1488, 1489, 1490, 1491 and 1492. It was further alleged that the Defendant started interfering and encroached upon the aforesaid land even prior to the purchase of the same by the Plaintiff. According to the Plaintiff, the Defendant had given an undertaking to Sh. Karam Chand Suri that he would either vacate the encroached area or compensate Sh. Karam Chand Suri. Writing in this behalf was allegedly executed on 17.4.1977, i.e., before the Plaintiff purchased the suit land on 16.11.1977.

3. According to the Plaintiff, during the course of the settlement operations, she came to know that the Defendant had encroached upon 22 square meters of land comprised in Khasra No. 1492. Hence the suit was filed for removal of

encroachment and possession of the suit land.

4. The Defendant contested the suit and according to the Defendant, he had purchased the land including the suit land from the previous owner on 16.11.1970. The Defendant denied that Khasra Nos. 1487 to 1492 were part of the land purchased by the Plaintiff. It was alleged that during the settlement operations, the Plaintiff in connivance with the settlement staff managed to get the land owned by him increased and then filed the suit. It was further averred that the Plaintiff had raised the construction much prior to 1977 and the Defendant had raised the entire construction prior to 1973. In the alternative, it was prayed that the Defendant had become owner of the suit land by way of adverse possession.

5. Various issues were framed and the learned Trial Court held that the Defendant was in possession of the land since 1967 and had constructed a house on it prior to 1973 when the Plaintiff had not even purchased the land. Therefore, it was held that the Defendant had not encroached upon the suit land. It was further held that the Defendant had become owner of the suit land by way of adverse possession.

6. The learned Lower Appellate Court confirmed the finding that the Defendant had not encroached upon the suit land but came to the conclusion that once the Defendant was found to be owner of the suit land, the learned Trial Court erred in holding that the Defendant had become owner of the same by way of adverse possession.

7. This appeal was admitted on various questions of law but the basic question is whether the Plaintiff has proved that the Defendant had encroached upon 22 square meters of the land comprised in Khasra No. 1492 or not.

8. Sh. Romesh Verma, learned Counsel for the Appellant-Plaintiff has drawn my attention to a number of documents including Ext.DH-1 and DW1/C and submitted that the Respondent had not claimed ownership of Khasra No. 1492 and since the settlement proceedings have not been challenged, the said land has to be held to be owned by the Plaintiff.

9. This is an appeal u/s 100 of the CPC Code. This Court can only set aside the judgment of the learned Trial Court when a substantial question of law is involved. The present case revolves around appreciation of evidence. This Court in Regular Second Appeal cannot start re-appreciating the evidence. Both the Courts below have clearly come to the conclusion that the Plaintiff has failed to prove her case. Sh. Romesh Verma has relied upon the document executed by the Defendant. In my view, no question of law much less a substantial question of law arises in this appeal, which is dismissed accordingly. No order as to costs.