
(2012) 12 SHI CK 0088

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 507 of 2009

Dinesh and Ors

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-12-2012

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 163, 171

Citation : (2012) 12 SHI CK 0088

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : G.R. Palsra, for the Appellant; Ruma Kaushik, Addl. A.G., for respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, Judge

1. This appeal is directed against the judgment, decree dated 15.06.2009 passed by Presiding Officer, Fast Track Court, Mandi, in Civil Appeal No. 3 of 2008, affirming judgment, decree dated 27.08.2007 passed by Civil Judge (Junior Division), Court No. II, Mandi, in Civil Suit No. 38 of 2001. The appellants were plaintiffs. The further facts of the case are that the appellants had filed a suit for permanent prohibitory and mandatory injunction on the grounds that they are owners in possession of the land comprised in Khasra No. 2702/1465, 2705/1466, measuring 161.53 square metres, situate in mauza Sain, Tehsil Sadar, District Mandi. Adjoining to the said land is the land comprised in Khasra No. 1469/1, 1467, 1468, kites 3, total measuring 443.53 square metres (hereinafter referred to as "suit land") which is recorded in the ownership and possession of State of Himachal Pradesh. But on the spot the suit land is in possession of the appellants qua which ejectment proceedings u/s 163 of the Himachal Pradesh Land Revenue Act were instituted against appellant No. 1. It has been stated that due to heavy rain fall on 09.08.1997 and 10.08.1997 flood water entered in the building situate on the land and caused extensive damage

thereto. The predecessor-in-interest of appellants requested respondent No. 1 to construct a retaining wall for the protection of their house, but no retaining wall was constructed. In these circumstances, predecessor-in-interest of the appellants constructed a protection wall by spending Rs. 60,000/- and since then the appellants through their predecessor-in-interest are in possession of the aforesaid land.

2. The respondents 4 and 5 in connivance with respondents 1 to 3 on 26.03.2001 started construction of an inn over the suit land close to the house and land of the appellants which construction if not stopped would deprive the appellants of their valuable rights and would also hamper flow of light and air to their house.

3. The suit was contested by respondents 1 to 3 by filing written statement. It has been stated that proceedings u/s 163 of the Himachal Pradesh Land Revenue Act against appellants have been initiated. The suit land was/is in their possession which had been given to Hanogi Mata Temple Trust on lease by the Director of Health Services, Himachal Pradesh, vide letter dated 17.03.2001 for construction of an inn for the attendants of the patients living below poverty line. It was pleaded that Court has no jurisdiction in view of Section 171 of the Himachal Pradesh Land Revenue Act. The remaining contentions of the appellants were also denied.

4. The respondents 4 and 5 also contested the suit by filing separate written statement taking preliminary objections of maintainability, cause of action. On merits, they admitted respondents 1 and 2 to be the owners of the suit land and initiation of ejectment proceedings against the appellants. The respondents 4 and 5 denied the remaining claim of the appellants.

5. The replication was filed and on the pleadings of the parties, the following issues were framed:-

(i) Whether the plaintiffs are in possession of the suit land as alleged? OPP.

(ii) If issue No. 1 is proved in the affirmative, whether the plaintiffs are entitled for the permanent prohibitory injunction as prayed? OPP.

(iii) Whether the plaintiffs have no enforceable cause of action? OPD-4 & 5.

(iv) Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

(v). Relief.

The issue No. 1 was answered partly in affirmative, issue No. 3 wholly in affirmative and issues No. 2 and 4 in negative and suit was dismissed on 27.08.2007. The appellants filed appeal which has been dismissed on 15.06.2009, hence second appeal.

6. I have heard learned counsel for the appellants and have also gone through the record. It has been submitted by learned counsel for the appellants that the

appellants were found in possession of Khasra No. 1469/2 measuring 4.20 square metres, Khasra No. 1469/1 measuring 51.45 square metres, Khasra No. 1467/1 measuring 8.50 square metres, total 64.15 square metres at the time of demarcation which is clear from the demarcation report Ex. DW 4/A. It has not been denied that against whole of the suit land proceedings u/s 163 of the Himachal Pradesh Land Revenue Act are pending against appellant No. 1 before Assistant Collector Ist Grade, Sadar, Mandi.

7. The learned counsel for the appellants has submitted that since appellants have been found in possession of 64.15 square metres as per demarcation report Ex. DW 4/A, therefore, the appellants are entitled to protect their possession and they are also entitled to a decree of injunction against the respondents to eject them in accordance with law. It has not been denied that respondent No. 1 is recorded owner of the suit land. The appellants are trespassers over the suit land and demarcation report Ex. DW 4/A is of no help to the appellants. It is the case of the respondents that the entire suit land has been given to Hanogi Mata Mandir Trust on lease by Director of Health Services vide letter dated 17.03.2001 for construction of an inn for the attendants of patients living below poverty line. The two Courts below have already appreciated the material on record. No substantial question of law is involved in the appeal. The view taken by the two Courts below is in consonance with the facts and law. The appeal is dismissed, so also the pending applications.