
(2008) 04 SHI CK 0023
In the High Court Of Himachal Pradesh

Harbans Lal and Another

APPELLANT

Vs

Kundan

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 10

Citation : (2008) 2 ShimLC 143

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—With the consent of the parties, the matter was taken-up for hearing and the parties were heard on the following substantial question of law:

Whether the Court below committed an illegality in rejecting the appellants' application under Order 41 Rule 27 CPC, seeking to bring on record pleadings of prior instituted suit between the parties, for determining the appellants' prayer of staying the instant suit in view of provision of Section 10 CPC?

2. The parties admittedly were co-sharers of land comprising Khata Khatauni No. 45/92, bearing Khasra Nos. 186, 187, 647/196, Kitas 3, measuring 0-58-49 Hectares situated at village Dochi, Pargana Chail, Tehsil Kandaghat, District Solan H.P. (hereinafter referred to as "the suit land"). The said land stood partitioned, under the revenue law, in terms of orders dated 3.6.1995 passed by the Assistant Collector 1st Grade and orders dated 21.1.1998 affirming the mutation. The orders passed by the revenue authorities were assailed by Shri Harbans Lal, the present appellant by way of Civil Suit No. 250/1 of 1998 titled as Harbans Lal v. Nek Ram and Anr. On 19.3.1992, the Civil Judge dismissed the plaintiff's application under Order 39 Rules 1 and 2 CPC. In an appeal filed against the said order, the Additional District Judge, Solan on 7.6.2002 allowed the appeal and directed the parties to maintain status quo with regard to the nature and possession of the suit land till the disposal of the suit. Admittedly, the suit is still pending trial.

3. Apprehending interference by the appellants herein, Shri Kundan Lal Verma, respondent herein filed another suit being Civil Suit No. 59-K/1 of 2000 which stood decreed in terms of judgment and decree dated 31.10.2006 passed by the Civil Judge (Sr. Division), Kandaghat, District Solan, H.P. The foundation of the plaintiff's suit for perpetual and prohibitory injunction was the orders passed by the revenue authorities in the partition proceedings. Based on the pleadings of the parties, the trial Court framed a specific issue as to whether the suit ought to have been stayed in view of the pendency of the prior suit inter se between the parties. In its wisdom, the trial Court rejected the defendants plea and held the suit was not liable to be stayed.

4. Shri Harbans Lal, appellant herein aggrieved by the said judgment, filed an appeal before the District Judge, Solan. The main appeal was fixed for hearing on 2.1.2008 on which date none appeared on behalf of the appellants but however, the learned Counsel for the respondent was heard and the matter was fixed for pronouncement of judgment on 7.1.2008. The order is reproduced as under:

2.1.2008: Pt: None for the appellant.

Shri P.C. Sood, Advocate, for the respondent.

Arguments heard. Put up on 7.1.2008 for orders.

Sd/- (J.N. Yadav) Addl. District Judge, (Fast Track Court) Solan 2.1.2008.

5. On 3.1.2008, however, the appellant moved an application under Order 41 Rule 27 CPC seeking to bring on record the pleadings of earlier Suit No. 250/1 of 1998, which admittedly was taken on record but however, was dismissed on 7.1.2008, on the ground that since the main appeal stood disposed of on 7.1.2008, therefore, no order was required to be passed on the same and the application was not maintainable.

6. I have heard the learned Counsel for the parties and seen the record.

7. The reason given for rejecting the application is reproduced as under:

The main appeal was fixed for 2.1.2008 for final arguments. Neither the applicants nor Counsel of the applicants put in appearance on that date. However, the arguments on behalf of Counsel for the respondent were heard on that date and the main appeal was adjourned to 7.1.2008 for final arguments. The present application for additional evidence was filed on 3.1.2008 i.e. when nothing was left to be done in the main appeal except the announcement of the judgment. Hence, the application cannot be said to be maintainable as it was filed at the stage when the case was fixed for orders.

8. Since the matter was pending before the first Appellate Court on 3.1.2008, the date when the application was moved, it was incumbent upon the Judge to have passed an order on merits rather than dismissing the same on the ground that the application was not maintainable. The fact of the matter is that on 3.1.2008, the matter was still pending and the judgment had not been pronounced by the

Court below. Further, the findings are contradictory to the record. The appeal was not adjourned for 7.1.2008 for final arguments as observed by the Court but the same was fixed for pronouncement of judgment. The application had to be considered and disposed of prior to the decision of the appeal.

9. The appellants' contention of staying the present suit, in view of the pendency of earlier suit was rejected on the ground that there was no material on record to substantiate the plea that the subsequent suit was directly and substantially in issue in a previously instituted suit between the parties when the appellants attempted to bring on record the pleadings of the earlier suit, the Court dismissed the application without even considering the implication thereof.

10. In my view, the Court has committed serious error by passing an erroneous order which in any event is contrary to record.

In this view of the matter, the impugned judgment and decree dated 7.1.2008 needs to be set-aside and is ordered accordingly. The appeal is restored to its original position. The matter is remanded back to the first Appellate Court for consideration of the application and respective contention of the parties. It is clarified that the matter has not been decided on merits of the appeal before the Court below.

11. Learned Counsel for the parties undertake to appear before the concerned Court on 28.4.2008. The application shall be decided afresh on merits in accordance with law. Learned Counsel for the appellants states at the bar that during the pendency of Civil Suit No. 250/1 of 1998 as also Civil Suit No. 59-K/1 of 2000, the parties shall continue to maintain status quo with regard to the nature and possession of the suit premises. The question of law is answered accordingly.

12. The appeal is accordingly disposed of.

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13. In view of the disposal of the main appeal, this application also stands disposed of.