

(2011) 09 SHI CK 0054

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal . 479 of 2001

Jagtu @ Jagat Ram

APPELLANT

Vs

Ruldu and Another

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Evidence Act, 1872 — Section 65, 66

Himachal Pradesh Land Revenue Act, 1954 — Section 163

Citation : (2011) 3 ShimLC 418

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The present Regular Second Appeal was admitted on the following substantial questions of law:

1. Whether the learned Courts below are right in taking into consideration the evidence led in rebuttal in the form of statement of PW3, the alleged receipt Ext.PW3/A and PW3/B from the extract of register of Document writer for decreeing the suit of the Plaintiff?
2. Whether the learned Courts below are right in not taking into consideration the Provisions of Registration Act wherein transaction involving more than rupees 100/- was required to be compulsorily registered?
3. Whether the learned Courts below are right in placing reliance upon the entries in Exhibit PA as well as in subsequent jamabandis especially when the original entry dated 31.8.1980 in Ext.PA is without any authority of law?
4. Whether the impugned judgment and decree is the result of non-consideration of law laid down by the Apex Court in 1969 P.L.J. 105?
5. Whether the learned lower appellate Court is right in not taking into consideration the ground with respect to the provisions of Sections 65 and 66 of

the Indian Evidence Act?

2. Precisely the facts giving rise to the present appeal can be stated thus. The land is comprised of Khasra No. 1613/1, as per Jamabandi for the year 1990-91, situated in Phati Natham Kothi Naggar, Tehsil and District Kullu, H.P., hereinafter to be referred as the "suit land".

3. The suit land is recorded in the ownership of the Provincial Government but in possession of Respondent No. 1 Ruldu, hereinafter to be referred as "the Plaintiff.

4. The Plaintiff filed a civil suit for injunction, on the pleas that the suit land was recorded as "Banjar-Kadim" in the revenue papers. He made it worth cultivation and raised an orchard thereupon, whereas the Appellants and the Respondent No. 2 to be referred as "Defendants" have no right, title or interest thereon. They being of quarrelsome nature, wanted to create a boundary dispute and caused unlawful interference with a view to dispossess the Plaintiff from the suit land. Hence sought injunction.

5. The Defendants denied the possession of the Plaintiff. According to them, the entries in the revenue record are against the factual position. It is also contended that the father of Defendant No. 2 Shri Ishru was in possession of the suit land as an encroacher and he was recorded in possession thereof. Said Shri Ishru handed over the possession of the suit land to Shri Ramu, father of Defendant No. 1 in the year 1968 and after his death, Defendants came in its possession without any interruption. The father of Defendants No. 1 and brother of Jagtu Defendant raised an orchard about 17/18 years back and the Plaintiff manipulated the entries in his name by substituting the entry of Ishru, therefore, resisted the suit for the relief sought.

6. In replication, Plaintiff re-affirmed the even paras on merits and averred that after Ishru father of the Defendant was in possession of the suit land as an encroacher, but he had executed an agreement on 10.8.1972 thereby delivering its possession to him and since then he is in possession of the suit land.

7. On the pleadings of the parties, learned trial Court framed the following issues:

1. Whether the Plaintiff is entitled for the relief of injunction as prayed for? OPP.
2. Whether the Plaintiff is not in possession of the suit land and as such, the suit is not maintainable as alleged? OPD.
3. Whether the suit is bad for non-joinder of necessary parties? OPD.
4. Whether the Plaintiff has got no cause of action and locus-standi? OPD.
5. Whether the suit is not within limitation?...OPD.
6. Relief.

8. Learned trial Court decided Issue No. 1 in favour of the Plaintiff and other issues against the Defendants, as such decreed the suit.

9. Defendant Jagtu filed an appeal before the Learned District Judge, which was also dismissed on the grounds that the Defendants are not in possession of suit land and qua the possession of the Plaintiff, the findings were upheld, hence the present Regular Second Appeal before this Court.

10. Ms. Devyani Sharma, Learned Counsel for the Defendant/Appellant vehemently argued that the Plaintiff has admitted that said Ishru was an encroacher upon the suit land and he surrendered his possession after taking an amount of Rs. 750/- to him vide writing executed by him. The original writing which was alleged to have executed on 10.8.1972 did not find the light of the day till its incorporation in the jamabandi in the year 1980 and further that the entries in the Jamabandi in favour of the Plaintiff were incorrect. She also ventilated that the oral evidence led by the Plaintiff is contradictory, whereas, the witnesses of the Defendants are consistent with respect to the possession of the Defendants, therefore, the decree of injunction ought not to have been passed by the learned trial Court.

11. Notice of the appeal was given to the Respondents, but despite their service, they rescued from their presence.

12. I have examined the contention raised by the Learned Counsel for the Defendant-Appellant. There are concurrent findings of facts with respect to the possession arrived at in favour of the Plaintiff by the learned Courts below. There is also no mis-appreciation or misinterpretation of the evidence on record. The suit land is owned by the Provincial Government and the State Government has not been made a party. Though suit is for injunction but it has inbuilt relief of declaration as well, which cannot be granted in absence of the real owner, i.e., the State of Himachal Pradesh. Further, admittedly, Ishru himself was an encroacher upon the suit land. After his death even it could not have been inherited by the Defendants in any capacity because it was not inheritable estate nor the doctrine of tacking applies to the illegal possession. Since the Plaintiff has been proved in possession of the suit land, thus, the learned Courts below have rightly issued the injunction against the Defendants. The writings Exts.PW3/A and Ext.PW3/B and also the entries Ext.PA with respect to the possession and admission of the secondary evidence with respect to the documents aforesaid are of no consequence to upset the concurrent findings of fact. The entries of the Plaintiffs and also that of Ishru are without any status and the revenue officer was not at all competent to make such an entry.

13. In view of the above, no question of law, much less the substantial questions of law arises in the present appeal for determination as such it merits dismissal subject to the modification in the impugned judgment and decree passed by the learned trial Court and affirmed in appeal that the Plaintiff shall not be evicted from the suit land, except in accordance with law.

14. Since the suit land is a Government land, the State Government shall take action for the eviction of the Plaintiff or any other person found in possession

thereof as per the provisions of Section 163 of the H.P. Land Revenue Act. It is open to such encroacher to take up any defence available to him.

15. The Collector, Kullu is hereby directed to hold an inquiry into the fact as to how the entry of possession was made in favour of the private party with respect to the Government land and take action against such a revenue officer/official found involved in accordance with law. He shall also be competent to order the revenue officer subordinate to him having jurisdiction to initiate the ejectment proceedings against the Plaintiff or any other person found in possession of the suit land.

16. No other point urged before me.

17. The appeal filed by the Defendant-Appellant sans merit and is accordingly dismissed in the above terms. Parties are left to bear their own costs.

18. An authenticated copy of this judgment be sent to the Collector, Kullu for his information and necessary action at his end.