

(2015) 06 SHI CK 0044

In the High Court Of Himachal Pradesh

Case No : LPA No. 67 of 2014 and RSA No. 75 of 2012

Jai Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 54
Transfer of Property Act, 1882 — Section 41

Citation : (2015) 2 ShimLC 1180

Hon'ble Judges : Mansoor Ahmad Mir, C.J;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Lalit K. Sharma, for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma and Anup Rattan, Addl. A.Gs. and J.K. Verma, Dy. A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J—This appeal is directed against the judgment and order, dated 20th June, 2013, passed by a learned Single Judge of this Court, in writ petition, being CWP No. 5080 of 2010, titled Kaul Singh versus State of H.P. and others, whereby the order made by the Divisional Commissioner, Mandi, exercising the powers under Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, (for short, the Act), in Revision Petition No. 913/2009, titled Jai Singh v. Kaul Singh, came to be set aside, (for short, the impugned judgment).

2. Facts of the case, in brief, are that the writ petitioner Kaul Singh, (respondent No. 3 herein), invoked the jurisdiction of the Writ Court by the medium of the writ petition, questioning the order made by the Divisional Commissioner (respondent No. 2 herein), whereby the Revision Petition filed by the appellant/writ respondent was allowed.

3. It is apt to reproduce operative portion of the order passed by the Divisional Commissioner, hereunder

"In view of the observations made above, the revision petition is accepted to the extent that Kh. No. 443 land measuring 0-04-11 bigha be allotted to the petitioner and 1/4 share from Khasra No. 439, 440, 441, 442 and 462 kita 5 total land measuring 0-17-06 i.e. 0-04-07 bigha be allotted to the respondent. A Copy of this order be sent to the Tehsildar Sadar, District Mandi for compliance."

4. Against this order of the Divisional Commissioner, the writ petitioner Kaul Singh filed the writ petition, which was allowed by the learned Single Judge vide the impugned judgment and the order of the Divisional Commissioner was set aside.

5. Feeling aggrieved, writ respondent No. 3 Jai Singh has filed the instant appeal against the impugned judgment passed by the learned Single Judge.

6. Admittedly, the consolidation proceedings were started in the year 1992-93 and concluded in the year 1997. The appellant Jai Singh invoked the jurisdiction of the Revenue Authorities after a lapse of around 12 years, i.e. in the year 2009 by filing a revision petition. Without considering the factum of delay and laches and other aspects of the case, the Divisional Commissioner ordered rectification in the revenue entries in terms of the order reproduced supra.

7. The question is - Whether the Divisional Commissioner, exercising powers under the Act, was competent to make the order, which was barred by delay and laches? The answer is in the negative for the following reasons.

8. The Writ Court has examined the entire record while discussing the said issue and has rightly held that the Divisional Commissioner has fallen in error and has committed grave injustice while allowing the Revision Petition for the reason that the revision petitioner (appellant herein) has remained in deep slumber and has not questioned the proceedings concluded in the year 1997 for a considerable long period and what were the reasons for not questioning the same have not been spelled out in the revision petition. He has not been able to carve out a case for condonation of delay not to speak of sufficient cause.

9. Limitation period is not prescribed for exercising the revisional jurisdiction, but it can be exercised "at any stage". The Apex Court right from 1950 has discussed what does words "at any stage" mean in catena of judgments, which have been discussed by the learned Single Judge in paragraphs No. 14 to 18 of the impugned judgment. Ratio laid down in those decisions has been applied by the learned Single Court and has rightly allowed the writ petition.

10. It is worthwhile to mention here that Kaul Singh had filed a Civil Suit seeking the relief of permanent prohibitory and mandatory injunction against the appellant Jai Singh and one Bhup Singh qua the property in dispute. Jai Singh and Bhup Singh (defendants) resisted the suit by filing written statements. The

suit was decreed partly against Jai Singh, who challenged the same before the District Judge, Mandi, which also came to be dismissed, constraining Jai Singh to assail the said judgment by filing Regular Second Appeal in terms of Section 100 of the Code of Civil Procedure (for short, CPC).

11. Findings of the Civil Court are binding on the Revenue Court and the Revenue Court has no jurisdiction to sit over the findings recorded by the Civil Court. It is also well settled principle of law that revenue records confer no title on the party and substantive rights of the contesting parties, qua title and of ownership, can be determined only by a competent civil Court.

12. The Apex Court in *Rajinder Singh Vs. State of Jammu and Kashmir and Others*, (2008) 8 JT 159 : (2008) 10 SCALE 60 : (2008) 9 SCC 368 , has laid down the same principle. It is apt to reproduce paragraph 17 of the said decision hereunder:

"17. It is well settled that Revenue Records confer no title on the party. It has been recently held by this Court in *Suraj Bhan and Ors. v. Financial Commissioner and Ors.*, that such entries are relevant only for "fiscal purpose" and substantive rights of title and of ownership of contesting claimants can be decided only by a competent civil Court in appropriate proceedings."

13. In the instant case, the Divisional Commissioner, while exercising powers under the Act, has virtually upset the judgment and decree passed by the Civil Court, ignoring the fact that a civil suit was already pending between the parties qua the same property before the Civil Court.

14. Another aspect of the case, which cannot be ignored, is that defendants Jai Singh and Bhup Singh had filed joint written statement before the Court of Civil Judge (Junior Division), Court No. 4, Mandi, wherein it has been admitted that some raw material had been stacked by the son of Jai Singh over the land in dispute, but with the permission and consent of the plaintiff. It is apt to reproduce relevant portion of paragraph 2 of the written statement hereunder:

".....No raw material for construction of house is being collected on khasra No. 443 by replying defendant No. 1 as alleged and therefore question of any request and alleged threatening with dire consequences does not arise at all. However, it is submitted that some raw material has been stacked by son of replying defendant No. 1 namely Davinder Singh on some part of land owned by plaintiff with permission and consent of plaintiff which will be removed by him after rainy season....."

(Emphasis added).

15. Keeping in view the pleadings contained in paragraph 2 of the written statement, reproduced above, the defendants i.e. Jai Singh and Bhup Singh, had admitted virtually the claim of the plaintiff Kaul Singh and have also stated that the son of defendant No. 1 Jai Singh has stacked the raw material only with the consent of the plaintiff Kaul Singh, which would be removed shortly. Thus, it does

not lie in the mouth of the appellant Jai Singh to lay claim before the Revenue Authority.

16. Having said so, we are of the view that the writ Court has rightly quashed the order made by the Divisional Commissioner.

17. We accordingly hold that there is no merit in the appeal filed by the appellant and the same is dismissed and the impugned judgment is upheld.

RSA No. 75 of 2012:

18. Original defendant No. 1 Jai Singh has filed the instant appeal under Section 100 of the Code of Civil Procedure, (for short, the CPC), against the judgment, dated 22nd September, 2011, passed by the District Judge, Mandi, in Civil Appeal No. 145 of 2009, titled Jai Singh v. Kaul Singh and another, whereby the judgment and decree, dated 23rd March, 2009, passed by the Civil Judge (Junior Division), Court No. 4, Mandi, decreeing the suit of the plaintiff Kaul Singh (respondent No. 1 herein), came to be affirmed.

19. Brief facts of the case, necessary to dispose of this appeal, are summarized as under:

20. The plaintiff filed a suit for permanent prohibitory and mandatory injunction on the ground that, despite the fact that the plaintiff was recorded as owner in possession of the land comprised in Khasra Nos. 438, 443, 448, 455, 461, 619, 622, 638 and 640, measuring 5-18-11 bighas, situated in Mauja Panjehti, Tehsil Sadar, District Mandi, H.P., the defendants were stacking construction material in Khasra No. 443 and also laid pipe line in khasra No. 448, without his permission.

21. The defendants resisted the suit by filing the written statement.

22. The issues were struck and the parties led their evidence.

23. The learned trial Court, after appreciating the rival contentions of the parties, decreed the suit partly and defendant No. 1 (appellant herein) was restrained not to stack any raw material over the suit land comprised in Khasra No. 443, which findings of the learned trial Court came to be upheld by the learned District Judge, on appeal filed by defendant Jai Singh.

24. Feeling aggrieved, the defendant filed the instant Regular Second Appeal.

25. The appeal was admitted by this Court on 2nd May, 2013, on the following substantial questions of law:

"1. Whether learned lower Appellate Court has erred in dismissing the application under Order 41 Rule 27 CPC filed by the appellant before him?

2. Whether the Courts below have erred in granting decree of permanent prohibitory injunction in favour of respondent No. 1 as the land in question during the pendency of the litigation has been allotted to appellant in consolidation but that order has been stayed in writ petition filed by respondent

No. 1?"

26. Appellant had filed an application under Order 41 Rule 27 of the CPC for placing on record the order, dated 17.2.2010, made by the Divisional Commissioner in Revision Petition No. 913 of 2009, whereby the revision petition filed by the appellant was allowed, came to be stayed by the Writ Court and was, thus, under eclipse, (subject matter of the Letters Patent Appeal supra).

27. The civil suit was filed by the plaintiff Kaul Singh in the year 2006 and was decreed vide judgment and decree, dated 23rd March, 2009 and the Divisional Commissioner has passed the order in the Revision Petition on 17th February, 2010.

28. The Apex Court in *Rajinder Singh Vs. State of Jammu and Kashmir and Others*, (2008) 8 JT 159 : (2008) 10 SCALE 60 : (2008) 9 SCC 368 has held that when appropriate proceedings are drawn in a competent Civil Court for the determination of substantive rights of ownership, the observations made in the orders of Revenue Authorities shall not come in the way of the parties. It is apt to reproduce paragraphs 19 and 20 as under:

"19. The present appeal, therefore, deserves to be disposed of by leaving all the parties to take appropriate proceedings in accordance with law in a competent civil Court so far as substantive rights of ownership, title or inheritance are concerned. In view of the fact, however, that certain observations have been made and questions have been considered with regard to rights of sons and daughters in the property of father under the Hindu Succession Act as also under the Jammu and Kashmir Hindu Succession Act, we clarify that all those observations which were not relevant in view of the limited question before the Revenue Authorities, would have no effect in the proceedings before the Civil Court if such proceedings have been initiated in a competent Court.

20. We, therefore, dispose of this appeal by granting liberty to the parties to take appropriate proceedings in a competent Civil Court by making it clear that the observations made in the orders of Revenue Authorities as also by the High Court will not come in the way of the parties in a suit as and when proceedings have been initiated for the purpose of determination of substantive rights of ownership."

29. It is worthwhile to mention here that the plaintiff Kaul Singh had already questioned the said order of the Divisional Commissioner by the medium of writ petition, which was stayed vide order dated 20th October, 2010, thus, was under eclipse. Therefore, the District Judge has rightly dismissed the application moved under Order 41 Rule 27 CPC. The said order of the Divisional Commissioner stands quashed by the Writ Court, vide judgment dated 20th June, 2013.

30. Thus, substantial question of law No. 1 is replied accordingly.

31. Coming to substantial question No. 2, the same is dependant upon question No. 1 and in view of the quashment of the order made by the Divisional

Commissioner, as discussed hereinabove, this question also loses efficacy and is replied accordingly.

32. However, we have gone through the plaint, written statement, evidence, oral as well as documentary, and have also perused the judgment made by the District Judge and are of the considered view that no substantial question of law, as formulated, is involved in the present appeal.

33. The plaintiff in paragraph 1 of the plaint has laid claim that defendants Jai Singh and Bhup Singh, without any reason, are causing interference with his possession and have also stacked material. Defendants, in their joint written statement, have not laid any claim viz a viz. the property in dispute and the learned trial Court accordingly passed the decree in favour of the plaintiff, which came to be affirmed by the District Judge. A reference has already been made to the relevant portion of the written statement of the defendants while dealing with the Letters Patent Appeal (*supra*) and the same is not being reproduced for the sake of brevity.

34. The Apex Court in series of cases has laid down the principle as to what question can be said to be substantial question of law. The Apex Court in *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others*, AIR 2008 SC 2033 : (2008) 3 CLT 23 : (2008) 4 SCALE 718 : (2008) 4 SCC 594 : (2008) AIRSCW 4959 , has held that in the absence of pleadings and issue, no question of law relating to it could be formulated in second appeal. It was further observed that the question which has not been considered in the suit, cannot be gone into in second appeal. It is apt to reproduce paragraph 25 of the said decision hereunder:

"25. The High Court, in the absence of pleadings and issues, formulated in a second appeal arising from a suit for bare injunction, questions of law unrelated to the pleadings and issues, presumably because some evidence was led and some arguments were advanced on those aspects. The only averment in the plaint that plaintiffs were the owners of the suit property having purchased the same under sale deeds dated 9.12.1968, did not enable the court, much less a High Court in second appeal, to hold a roving enquiry into an oral gift and its validity or validation of ostensible title under section 41 of TP Act. No amount of evidence or arguments can be looked into or considered in the absence of pleadings and issues, is a proposition that is too well settled."

35. It is also well settled proposition of law that the High Court under Section 100 of the CPC can interfere with the concurrent findings recorded by the Courts below only in case the said findings are perverse and arbitrary and are based upon non-appreciation of pleadings and evidence on record.

36. The Apex Court in *Kashmir Singh Vs. Harnam Singh and Another*, AIR 2008 SC 1749 : (2008) 4 JT 24 : (2008) 4 SCALE 300 : (2008) 12 SCC 796 : (2008) AIRSCW 2417 , has held that as a general rule, the High Court should not interfere with concurrent findings of the Courts below. However, the Apex Court

has also pointed out certain well recognized exceptions, where concurrent findings can be interfered with in a regular second appeal. It is apt to reproduce paragraph 17, as under:

"17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

37. The Apex Court in *Gurdev Kaur and Others Vs. Kaki and Others*, AIR 2006 SC 1975 : (2007) 1 CTC 334 : (2006) 5 JT 72 : (2006) 4 SCALE 436 : (2007) 1 SCC 546 : (2006) 1 SCR 27 Supp : (2006) AIRSCW 2404 : (2006) 3 Supreme 631 , while dealing with the scope of Section 100 of the CPC, has held, in paragraphs 68 and 69, as under:

"68. The analysis of cases decided by the Privy Council and this Court prior to 1976 clearly indicated the scope of interference u/s. 100 of the Code of Civil Procedure by this Court. Even prior to amendment, the consistent position has been that the Courts should not interfere with the concurrent findings of facts.

69. Now, after 1976 Amendment, the scope of Sec. 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering u/s. 100 of the Code of Civil Procedure only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the Section is that the appeal shall be heard only on that

question."

38. The learned counsel for the appellant, during the course of hearing, was not in a position to point out as to how the concurrent findings recorded by both the Courts below are not based upon correct appreciation of pleadings and evidence on record. Moreover, as discussed hereinabove, the defendants have virtually not denied the claim of the plaintiff, is an admission in the eyes of law, which fact has weighed with the Courts below in granting the decree in favour of the plaintiff. The Courts below have not committed any illegality and have returned findings on question of fact read with the pleadings of the parties. Therefore, the findings recorded by both the Courts below are well reasoned and no ground has been made out for setting aside the same.

39. Having said so, we hold that there is no merit in the second appeal and the same is dismissed.