

(2010) 11 SHI CK 0144

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No's. 287 and 497 of 2000

Kalavati and Others

APPELLANT

Vs

Mast Ram and Others

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

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

Citation : (2010) 11 SHI CK 0144

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By this Judgment the appeal filed by the original plaintiff and the cross-objections filed by the defendant are being disposed of.

2. Briefly stated the facts of the case are that Devi Saran predecessor-in-interest of the present appellant, who is also the father of defendant No. 1 Mast Ram, filed a suit in the trial Court claiming to be in possession of land comprised in Khewat Khatauni No. 21 Min/48, Khasra Nos. 185, 186, 188, 190, 191, 192, 193, 194, 195, 409, 410 and 412 Kita 12, measuring 5-3-12 bighas situate in Muhal Bhalash/290, Sub-Tehsil Nihri, Tehsil Sundernagar, District Mandi. In the suit it was stated that the State is the owner of the land but the same is in the possession of the plaintiffs. It was claimed that respondent Mast Ram, who is son of Devi Saran is interfering in the said land and threatening to demolish the house which the plaintiff had constructed on the land. Defendant Mast Ram filed a written statement and claimed that as far as the land comprised in Khasra Nos. 188, 192, 193 and 194 is concerned the same is coming in his possession for the last 40 years and there is a residential house, cowshed and Khalwara over the aforesaid land. The plea set up by the defendant was that he alongwith his family members is living in the house for the last 40 years and his possession is continuous, uninterrupted, open and hostile and has matured into title by way of adverse possession.

3. When the plaintiff appeared in the witness box he candidly admitted that the defendant had taken forcible possession of the disputed property. However, admittedly no amendment of the plaint was sought and only relief sought was relief of injunction. Therefore, the learned trial Court dismissed the suit of the plaintiff and held that the defendant is in adverse possession of the suit land which has matured into title. Appeal was filed by the plaintiff. In appeal the learned lower Appellate Court came to the conclusion that the plaintiff is not entitled to any relief but set-aside the findings of the learned trial Court that the defendant had become owner of the suit land by way of adverse possession. Hence, the present appeal by the plaintiff.

4. This appeal was admitted on the following substantial questions of law:

1. Whether the findings as recorded by both courts below are vitiated on account of misreading and misappreciation of the pleadings and oral and documentary evidence on record.

2. Whether, material admissions as made by the respondent as regards to subject matter of dispute have illegally been ignored.

3. Whether on the basis of mutation No. 60 attested by Assistant Collector Second Grade, incorporating in record of rights the conferment of ownership rights upon deceased Sh. Devi Saran renders findings as recorded by both the Courts below invalid.

4. Whether due to non-consideration of exhibit PB recording conferment of ownership rights upon late Sh. Devi Saran are illegal and wrong?

5. Cross-objections were filed by the defendant also, claiming that the Judgment of the learned lower Appellate Court in so far as it set-aside the findings on issue No. 7 is wrong and should be set-aside.

6. The undisputed facts are that even in the plaint the plaintiff claimed to be in possession but clearly stated that the land was owned by the State of Himachal Pradesh. No doubt, in replication it was stated that the proprietary rights had been granted to the plaintiff but there is not an iota of evidence on record in this regard. Admittedly, the State of H.P. was the original owner of the land. The State is not a party to the suit. The plaintiff himself admitted during the course of evidence that he is no longer in possession of the suit land and defendant had forcibly taken over possession. In that case, the suit should have been amended and relief of possession should have been sought. When relief of possession has not been sought and the plaintiff is not in possession he obviously cannot be granted any relief of injunction and his suit was rightly dismissed.

7. As far as the cross-objections are concerned the learned lower appellate Court rightly held that the person claiming adverse possession must first admit the ownership of some person and claim that his possession was hostile and adverse to that person. The State is not a party to the proceedings and the defendant did not state as to against whom he was claiming adverse possession. In fact, as

pointed out above in the written statement adverse possession was not claimed in regard to the entire land but only in respect of a few Khasra numbers. Since from the pleadings it is apparent that the State was the original owner adverse possession had to be claimed against the State and without the State being party no such finding with regard to the adverse possession could be given.

8. Therefore, I find that no question of law arises in this appeal or cross-objections. The appeal as well as the cross-objections are dismissed. No costs.

CMP No. No. 379 of 2010:

This is an application under Order 41 Rule 27 filed by the respondent for placing on record an affidavit. Since the appeal has been dismissed no orders are called for on this application.