

(2011) 12 SHI CK 0266

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 239 of 1999

Luxmi Dutt and Ors

APPELLANT

Vs

Shri Jai Ram alias Hira and Others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

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

Citation : (2011) 12 SHI CK 0266

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh , Judge

1. This appeal has been directed against the judgment, decree dated 18.03.1999 passed by learned District Judge, Solan, in Civil Appeal No. 20-NS/13 of 1994/92, affirming judgment, decree dated 09.09.1992 passed by learned Sub Judge Ist Class, Kandaghat, in Case No. 42/1 of 1986. Some of the parties have died, their legal representatives have been brought on record. In this judgment, the parties are referred to as plaintiffs and defendants.

2. The facts, in brief, are that plaintiffs had filed a suit for permanent prohibitory injunction against defendants restraining them from interfering in the land, more specifically, described in the plaint which for brevity sake hereinafter referred to as "Suit Land". It is the case of the plaintiffs that they along with proforma defendants are owners in possession of the suit land. The defendants No.1 to 19A were tenants of specific land in village Salihari and they have acquired proprietary rights. The entries showing State of Himachal Pradesh as owner of the suit land and in possession of "Bashindgan Deh" are wrong, the plaintiffs are not bound by the same. The defendants have no right in the suit land on the basis of wrong revenue entries. Only plaintiffs have title over the suit land which is situated in village Salihari. It has been stated that a decree in favour of

plaintiffs and against the State of Himachal Pradesh declaring plaintiffs as owners in possession of the suit land has already been passed by learned District Judge, Solan, in Civil Appeal No. 19-S/13 of 1978 decided on 28.02.1984, titled Bala Ram and others versus State of Himachal Pradesh. The defendants are threatening to interfere in the ownership and possession of the plaintiffs over the suit land on the basis of wrong revenue entries. On these averments, the plaintiffs filed the suit.

3. The contesting defendants filed joint written statement and contested the suit. They have pleaded that they are also owners in possession of the suit land along with plaintiffs and proforma defendants being right-holders in village Salihari. They have pleaded that some land was occupied by them and their predecessors-in 7 interest as tenants, proprietary rights of such land were conferred on them during the year 1952. It has been alleged that 100 bighas of land out of the land in question comprised in Khasra No. 1/2min was in possession of Smt. Jalfi,Dhania, Ghasantoo, Chet Ram. The said land is in possession of their successors. The plaintiffs cannot claim to be exclusive owners in possession of the suit land. The contesting defendants were not party in the civil suit which was filed by the plaintiffs against the State of Himachal Pradesh, therefore, they are not bound by any judgment in which they were not the party. The contesting defendants are also in possession of the suit land, therefore, there is no question of their causing any interference in the possession of the plaintiffs over the suit land.

4. It has been alleged that plaintiffs had earlier filed similar suit against contesting defendants which was dismissed on 25.09.1978. The present suit is neither competent nor maintainable. The plaintiffs have not approached the Court with clean hands, therefore, they are not entitled to discretionary relief of injunction. The contesting defendants have denied existence of cause of action. They have also taken the plea of limitation. The proforma defendants did not contest the suit and they were proceeded ex-parte by the trial Court on 20.04.1987. The replication was filed by the plaintiffs and they reiterated their stand.

5. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiffs are owners-in-possession of the suit land and entries in favour of defendants are wrong and not binding upon the plaintiffs? OPP.
2. Whether the defendants interfere in the possession of plaintiffs? OPP.
3. Whether the defendants No.1 to 19A are also owners-in-possession of suit land with plaintiffs and proforma defendants ?OPD.
4. Relief.

The issues No. 1 and 2 were answered in negative and issue No.3 in affirmative and the suit was dismissed by learned Sub Judge Ist Class on 09.09.1992.

6. It has been stated that plaintiffs filed appeal which was allowed by learned Additional District Judge on 28.11.1996. The second appeal was filed being RSA No. 57 of 1997 against judgment, decree dated 28.11.1996, which was allowed and the case was remanded to lower Appellate Court by the High Court on 29.04.1998. Thereafter, lower Appellate Court dismissed the appeal on 18.03.1999 which has been assailed by the plaintiffs in the present appeal which has been admitted on following substantial questions of law:

1. Whether on the proper construction of the provisions of the Punjab Village Common Land (Regulation) Act, 1961 and H.P. Village Common Land (Vesting & Utilization) Act, 1974, the land had vested in the Panchayat and later on in the State?

2. Whether the Court below has raised wrong presumptions from facts proved on record and the findings are vitiated for non-consideration and mis-construction of oral and documentary evidence?

7. The plaintiffs have filed CMP N. 953 of 2011 under Order 9 41 Rule 27 CPC for bringing on record order dated 07.04.2006 passed by Collector, Kandaghat. The plaintiffs have also filed CMP No. 1054 of 2011 under Order 41 Rule 27 CPC for bringing on record mutation No. 184 dated 22.05.2006 attested on the basis of order dated 07.04.2006 of Collector, Kandaghat. Both the applications have been contested by the defendants.

8. I have heard learned counsel for the parties and have also gone through the record. It has been submitted by learned counsel for the appellants/plaintiffs that two Courts below have misconstrued oral and documentary evidence. It has also been submitted that relevant provisions of Punjab Village Common Land (Regulation) Act, 1961 and Himachal Pradesh Village Common Land (Vesting & Utilization) Act, 1974 have been misconstrued and misinterpreted by the Courts below. The plaintiffs are in possession of the suit land which is supported by mutation No. 184 dated 22.05.2006. The defendants filed objections before the Collector, Kandaghat and their objections were rejected and thereafter mutation was attested.

9. The learned counsel for the defendants has submitted that defendants were not parties in RSA No. 12 of 1985. The plaintiffs did not implead the defendants as party in the civil suit out of which RSA No. 12 of 1985 had arisen. The defendants made an attempt for impleading themselves as party in RSA No. 12 of 1985, but their application was not allowed. In these circumstances, judgment rendered in civil suit or RSA No. 12 of 1985 is not binding on the defendants. It has been submitted that in fact the plaintiffs had earlier filed suit against the defendants which was dismissed vide judgment dated 25.09.1978 Ex. D-1. It has been submitted that only one defendant namely Med Ram appeared before the Collector, Kandaghat and opposed the proceedings and no other defendant was a party before the Collector, Kandaghat, therefore, order dated 07.04.2006 and mutation No. 184 are not binding on the defendants. The learned counsel for the

defendants has prayed for dismissal of CMP No. 953 of 2011 and CMP No. 1054 of 2011.

10. The learned counsel for the plaintiffs has submitted that plaintiffs may be permitted to bring on record order dated 07.04.2006 of Collector, Kandaghat and mutation No. 184 dated 22.05.2006 by way of additional evidence. It has been submitted that order dated 07.04.2006 and mutation dated 22.05.2006 will assist this Court in deciding the lis effectively. The Order 41 Rule 27 CPC reads as follows:

27. Production of additional evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

11. CMP No. 953 of 2011 has been filed on 17th October, 2011 and CMP No. 1054 of 2011 has been filed on 18.11.2011. The plaintiffs intend to bring on record order dated 07.04.2006 and mutation dated 22.05.2006 by moving CMP No. 953 of 2011 and CMP No. 1054 of 2011 respectively. It has not been explained why these applications were not filed immediately after order dated 07.04.2006 and mutation dated 22.05.2006. These applications have been filed more than 5 years after mutation order. These applications are hit by delay and laches. This apart order dated 07.04.2006 is based upon judgment dated 20.09.1995 in RSA No. 12 of 1985 in which admittedly the defendants were not parties. The mutation No. 184 dated 22.05.2006 is based upon order dated 07.04.2006. Once the defendants were not parties in the earlier civil suit in which judgment dated 20.09.1995 was given in RSA No. 12 of 1985, therefore, defendants are not bound by order dated 07.04.2006 as well as mutation dated 22.05.2006. The appearance of one defendant namely Med Ram before the Collector in the proceedings does not take away the rights of other defendants. Thus CMP No.953 of 2011 and CMP No. 1054 of 2011 will not help this Court in adjudicating the real dispute between the parties. Accordingly, CMP No. 953 of 2011 and CMP No. 1054 of 2011 are dismissed.

12. The substantial question of law No.1 is taken first for determination. The learned counsel for the plaintiffs has not pointed out from the pleadings or evidence the implication of Punjab Village Common Land (Regulation) Act, 1961 and Himachal Pradesh Village Common Land (Vesting & Utilization) Act, 1974. The suit has been filed by plaintiffs for permanent prohibitory injunction simply alleging that they are owners in possession of the suit land. In the plaint, it has not been stated how they are owners in possession of the suit land. At the time of hearing also, the implication of Punjab Village Common Land (Regulation) Act, 1961 and Himachal Pradesh Village Common Land (Vesting & Utilization) Act, 1974 regarding the title of the plaintiffs over the suit land has not been explained. The defendants have pleaded that they are also owners in possession of the suit land along with plaintiffs and proforma defendants. The implication of both the Acts has not been explained, therefore, substantial question of law No.1 is decided against the appellants/plaintiffs.

13. Insofar the substantial question of law No. 2 is concerned, the learned counsel for the plaintiffs has not pointed out any document from the record to show that plaintiffs are in exclusive possession of the suit land. It has not been denied by learned counsel for the plaintiffs that earlier plaintiffs and their predecessor had filed suit for permanent prohibitory injunction against defendants and their predecessor which was dismissed on 25.09.1978 by learned Sub Judge Ist Class, Kandaghat vide judgment Ex. D-1. In that suit, issue No.3 was with respect to the relief of injunction which was decided against the plaintiffs. The two Courts below on the basis of oral and documentary evidence have recorded a finding of fact that defendants are residents of Village Salihari and they are also possessing the land as "Bashindgan Deh". Exhibits D-4 to D-15 are the copies of jamabandies of land owned and possessed by the defendants in village Salihari. It has not been pointed out by learned counsel for the plaintiffs that view taken by the two Courts below is based upon inadmissible evidence or some material evidence having bearing on the merits of the case has been ignored. The conclusion drawn by the two Courts below emerges from the evidence on record. The substantial question of law No.2 is decided against the appellants/plaintiffs.

14. No other point was urged.

15. The result of above discussion, the appeal fails and is accordingly dismissed with no order as to costs.