

(1998) 11 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 117 of 1993

Mahajan and Another

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 163

Citation : (1999) 2 CivCC 598

Hon'ble Judges : Surinder Sarup, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; M.C. Mandhotra, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Surinder Sarup, J.—The plaintiffs-appellants, two in number, have filed the present second appeal against the concurrent judgments and decrees passed by the learned Sub Judge. Ist Class (II) Kangra at Dharamshala dated 28-06-1991 and the learned District Judge, Kangra at Dharamshala dated 29-12-1992. whereby their suit has been dismissed.

2. The appellants went to the Civil Court on the pleadings that the land in dispute, as per the description in the plaint and also the judgments under appeal, adjoined the land which was already in their ownership and possession. In the plaint, it was pleaded that the defendant-respondent-State of Himachal Pradesh was shown in the revenue record as its owner, while the Forest Department was shown as being in possession of the same. The case of the appellants is that they have been in possession of the land in dispute even prior to the year 1950. presumably through their forefathers, and thus, the above entries in favour of the respondent-State are factually wrong. It is also their case that their own house is standing over the land in dispute, which was in existence for 15 years prior to the filing of the suit. Both the adjoining land in their ownership and possession as well as the land in dispute had been enclosed by

them with an old hedge, and this fact was in the knowledge of the respondent. It was further pleaded that the latter had filed proceedings for eviction of the appellants from the land in dispute u/s 163 of the H.P. Land Revenue Act. Those proceedings resulted in an order of ejectment having been passed against them. Their appeals as well as revisions before the competent authorities under the said Act were also dismissed. In view of the observations made by the learned Divisional Commissioner while dismissing their revisions, they had applied to the Collector for exchange of the land in dispute with their adjoining land but no action was taken. The cause of action, as per their pleadings, arose when warrants for their dispossession from the land in dispute were issued against them, which also would have meant the demolition of their house.

3. In the written statement, the respondent took up the stand that the land in dispute is in its ownership being in possession of the Forest Department. The appellants had encroached upon the same forcibly and unlawfully, resulting in proceedings for their ejectment, which were lawful, as also the eviction order passed against them by the competent authority. Further, the stand in the written statement was that the land in dispute fell within the municipal limits of Dharamshala and was being described as "Jungle Mehfooja Gair Mehdooda". This being the entry in the municipal record, it was not possible to regularise the encroachment of the land in dispute by the appellants. Certain preliminary objections were also raised in the written statement of the respondent.

4. The following issues were framed:

"1. Whether the plaintiffs are in possession of suit land since prior to 1950 as Khewatdars? If so, its effect? OPP.

2. Whether the various cases instituted against the plaintiff by the Executive Authorities are illegal, as alleged? OPP.

3. Whether the plaintiffs have no right, title or interest over the suit land? OPD.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether this Court has no jurisdiction to try the instant suit? OPD.

6. Whether the plaintiffs have no cause of action to file the present suit? OPD.

7. Whether the suit is bad for non-joinder of necessary parties? OPD.

8. Whether the plaintiffs have encroached upon the suit land forcibly and unlawfully? OPD.

9. Whether the suit land falls within the limits of municipal committee and classified as DPF? If so, its effect? OPD.

10. Relief".

5. Issues No.1 and 2 were answered against the appellants. Issues No.3 and 8 were decided in favour of the defendant-respondent, while Issues No.4 to 7 and

9 were decided against it. The cumulative effect of these findings was the dismissal of the suit and subsequently their appeal.

6. The learned counsel for the parties have been heard and the record has been perused.

7. Before the learned lower appellate Court it was conceded by the appellants that in view of the law laid down by this Court in the case of Dalip Singh and others vs. State of H.P. and others (1992(1) Sim. L.C. 320). the Civil Court had no jurisdiction to grant the relief of declaration as sought in the suit by the appellants. That being the position, their learned counsel appearing before this Court has rightly not pressed the same.

8. In so far as the plea of adverse possession is concerned, that has also been rightly found against the appellants. This is so because the revenue record produced on their behalf does not show their possession over the land in dispute or even a part of the same. On the other hand, the entries in the revenue record are in favour of the defendant-respondent. In these circumstances, the oral evidence relied on behalf of the appellants obviously cannot have the effect of rebutting the presumption of truth that attaches to the record of rights under the law.

9. It has been brought to the notice of this Court at the hearing that while the first appeal was pending before the learned District Judge, an attempt was made to explore the possibility of exchange of land of the appellants with the land in dispute by the forest department. In this context, an order dated 28-05-1992 exists on the record of the proceedings before the learned lower appellate Court, whereby a report from the forest department was called, after its functionary was permitted to go to the spot and verify if the land in dispute is not covered by the trees. That having been done, a report was made which is also a part of that record. The same is by the Divisional forest Officer, Dharamshala Forest Division, Dharamshala dated 29-06-1992. As per its operative part, the proposed exchange of land was not possible as that would have attracted the provisions of the Forest Conservation Act. 1980, which could only be done after prior approval of the Central Government. Otherwise, as is clear from the said report of the Divisional Forest Officer, the exchange of the encroached forest land. i.e. the land in dispute with the land of the appellants would amount to diverting the land for non-forestry purpose which, obviously was impermissible.

10. Faced with the above situation. Shri Ajay Sharma, learned counsel for the appellants has submitted that the State may be directed through the concerned Forest department to apply to the Central Government and obtain approval for the exchange of the land in dispute with the adjoining land, admittedly being in their possession, regarding which there is no dispute in the present proceedings. This submission has been made by him primarily on the ground that as per the version of the appellants a dwelling exists on the land in dispute. However, it is not possible to accede to this prayer made on behalf of the appellants on the

short ground that this may give rise to a rash of such type of cases which obviously would have a deleterious effect on the environment and ecology of any area which is under forest. Moreover, there is no vested or legal right which would enable the appellants to hold on to their possession of the land in dispute, irrespective of the fact that a dwelling may be in existence thereon, in view of the established circumstances of the case whereby they failed to get their eviction order set aside, even in appeal or revision before the statutory authorities under the H.P. Land Revenue Act.

11. Lastly, the attempt made to get the said exchange done in proceedings before the learned appellate Court, got them no result because of the absolute bar created by the provisions of Forest Conservation Act, 1980. which are for the laudable object of protecting the forest environment so essential for the preservation of the ecology of this hilly State.

12. For the reasons aforementioned, there is no merit in this appeal and the same is dismissed, but in the circumstances of the case, the parties are left to bear their own costs.