

(2014) 09 SHI CK 0129
In the High Court Of Himachal Pradesh
Case No : RSA No. 307 of 2003

Prem Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2014) 09 SHI CK 0129

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : K.D. Sood, Sr. Advocate and Arjun K. Lall, Advocate for the Appellant; Ravinder Thakur, Addl. A.G., Tarun Pathak and Vivek Attri, Dy. A.Gs, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sureshwar Thakur, J.—The instant appeal is directed against the judgment and decree, rendered on 2.6.2003, in Civil Appeal No. 117 of 2000, by the learned District Judge, Bilaspur, H.P., whereby, the learned First Appellate Court dismissed the appeal, preferred by the plaintiffs/appellants, affirming the judgment and decree, rendered by the trial Court, on 31.8.2000.

2. Brief facts of the case are that the predecessor-in-interest of the appellants, namely, Budhu (the original plaintiff), instituted a suit for declaration with consequential relief of permanent injunction against the defendant/respondent, on the allegations that he had been owner in possession of land, comprised in Khata/Khatauni No. 47/51 min, Khasra Nos. 322/304/1, measuring 7-2 bighas, situated in revenue estate Kothi, Pargna Rattanpur, Tehsil Sadar, District Bilaspur. It is averred that the plaintiff had applied for allotment of the suit land in his favour by way of exchange to the State. The application of the plaintiff had been considered and allowed vide order dated 19.3.1990 passed by the Deputy Commissioner. The plaintiff had given his land measuring 7-2 bighas of revenue estate, Majher to the State. The plaintiff had deposited a sum of Rs. 16,350/- as Nazrana for getting the suit land in exchange. After allotment of the suit land in

his favour by way of exchange, the plaintiff had broken-up and cleared for cultivating the suit land. The plaintiff had spent a sum of Rs. 25,000/- on the development of the suit land. The Financial Commissioner, H.P. vide order dated 16.8.1995, unauthorizedly and illegally, had cancelled the allotment of the suit land in favour of the plaintiff. The order dated 16.8.1995 of Financial Commissioner was wrong, illegal and liable to be set aside. The defendant/State was sought to be restrained from interfering with the ownership and possession of the plaintiff of the suit land by issuance of a decree of perpetual injunction. With these allegations, the plaintiff had instituted the suit in the learned trial Court on 8.2.1996.

3. The defendant/respondent contested the suit by filing written statement wherein the State/defendant had taken the preliminary objections inter alia maintainability, cause of action, jurisdiction and improper valuation of the suit. On merits, the defendant/respondent had denied the ownership and possession of the plaintiff of the suit land. It is averred that the plaintiff had applied for exchange of the suit land in his favour with his land measuring 7-2 bighas of revenue estate, Majher. The Deputy Commissioner vide order dated 19.3.1990 had allowed the exchange. The proprietors had instituted a revision against the order dated 19.3.1990 before the Financial Commissioner. The Financial Commissioner vide order dated 16.8.1995 had set aside the order dated 19.3.1990, passed by the Deputy Commissioner. The plaintiff was stated to have manipulated the exchange of the suit land in his favour by dubious means. The plaintiff has been averred by the defendant not entitled to any relief much less to the discretionary relief of permanent injunction.

4. The plaintiffs/appellants did not choose to file the replication to the written statement of the defendant/respondent.

On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the plaintiff is owner in possession of the suit land? OPP
2. Whether the order of Deputy Commissioner dated 19.3.1990 is legal and valid, as alleged? OPP
3. Whether the order of Financial Commissioner dated 16.8.1995 is illegal against law. If so, its effect? OPP
4. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPP
5. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

8. Whether this Court has no jurisdiction to entertain and decide the present suit? OPD

9. Relief.

5. On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff/appellant, entitling him only to Nazrana of Rs. 16,350/- with interest from the date of deposit and till its realization, as well as cost made by him the development of the suit land after the proper assessment by the competent authority. In appeal, preferred before the learned first Appellate Court, against the judgment and decree of the learned trial Court, by the plaintiff/appellant, the learned first Appellate Court dismissed the appeal.

6. Now the plaintiffs/appellants have instituted the instant Regular Second Appeal before this Court, assailing the findings, recorded by the learned first Appellate Court, in, its impugned judgment and decree. When the appeal came up for admission on 12.3.2003, this Court, admitted the appeal instituted by the defendant/appellant, against the judgment and decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial questions of law:-

1. Whether the modification of the judgment of the trial Court by District Judge disallowing the interest on Rs. 16,350/- without filing of Cross appeal or Cross Objections is sustainable in law?

2. Whether the exchange could be cancelled without refund of the Nazarana and interest and the return of the land given in exchange without having the exchange invoked by filing a suit?

Substantial questions of Law No. 1 and 2.

7. The learned counsel for the plaintiffs/appellants does not contest the tenability of the concurrent findings, recorded by both the learned Courts, of the grant of the suit land by way of Nautor under Ext. P-8 to the plaintiff being legally fallible, as such, liable to be set aside, it being made in favour of the plaintiffs/appellants, at a time when a ban against the allotment of land by way of Nautor to the landless persons was in existence. His address before this Court is confined to the fact of the learned trial Court in its judgment and decree while dismissing the suit of the plaintiff having held him entitled to a Nazrana of Rs. 16,350/- with interest from the date of its deposit until its realization. He contends that when the said relief, as afforded in favour of the plaintiff, remained un-assailed at the instance of the defendant-respondent by filing a cross appeal before the learned first Appellate Court, hence, it was legally unwarranted for the learned first Appellate Court to modify the relief, aforesaid, as accorded by the learned trial Court in favour of the plaintiff-appellant, inasmuch, as, it, while affirming the verdict of the learned trial Court, of the plaintiff-appellant being entitled to a sum of Rs. 16,350/-, to omit to afford in his favour the benefit of or relief of interest on the amount, aforesaid, from the date of its deposit till its realization. The

reason, as afforded by the learned First Appellate Court, in denying to the plaintiff-appellant the relief of interest on the amount of Rs. 16,350/- is of the plaintiff-appellant enjoying the usufruct of the said land since it is grant in his favour till the rendition of judgments and decrees against him by both the Courts below. The amount of Rs. 16,350/- deposited as Nazrana by the plaintiff-appellant with the defendant-respondent, on the grant of Nautor land in his favour being set aside, was uncontrovertedly as well as undisputedly, in the absence of evidence portraying that it was unrefundable to him, was refundable to him, as it constituted the consideration or the quid pro quo for the grant, besides, it also constituted the ingrained/inherent fact, that on cancellation of the grant of Nautor land in favour of plaintiff-appellant, the plaintiff-appellant was entitled to its refund. The reason, as afforded by the learned first Appellate Court of interest accrued on the amount aforesaid, being deniable to the plaintiff-appellant on the score of his having used the usufruct of the land, is untenable, inasmuch, as, (a) there is no demonstrable condition in the grant of the suit land as Nautor made in favour of the plaintiff-appellant of his being disentitled to the interest accrued on the amount aforesaid, in case, for violation of the conditions of the grant or for any other reason the grant of suit land by way of Nautor land is cancelled; (b) want of any apparent and palpable condition in the grant of the suit land by way of Nautor to the plaintiff-appellant that on his taking to utilize the usufruct of the suit land even when it is cancelled would render him to be disentitled to the interest accrued on the amount of Rs. 16,350/- deposited as Nazrana or as a quid pro quo for the allotment of the suit land to him by way of Nautor. Consequently, in the absence of the aforesaid material on record, it was wholly untenable for the First Appellate Court to disallow the relief of interest on the amount of Rs. 16,350/- which had been rather aptly and tenably decreed in favour of the plaintiff-appellant by the learned trial Court. Moreso, when the defendant-respondent had not filed any cross-appeal or cross-objections before the First Appellate Court assailing the relief as afforded aforesaid by the learned trial Court in favour of the plaintiff-appellant.

8. This Court accepts the submission of the learned counsel for the plaintiffs and directs that the appeal be allowed to the extent that the relief, as afforded in favour of the plaintiffs/appellants by the learned trial Court, be accorded to the plaintiffs/appellants. Accordingly both the substantial questions of law are answered in favour of the plaintiffs/appellants and against the defendant/respondent. No costs.