

**(2016) 08 SHI CK 0042**  
**In the High Court Of Himachal Pradesh**  
**Case No : RSA No. 100 of 2003**

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| Ramesh Rattan | Vs | APPELLANT  |
| Jeet Singh    |    | RESPONDENT |

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**Date of Decision :** 29-08-2016

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Specific Relief Act, 1963 — Section 38, Section 39

**Citation :** (2016) sup HimLR 2606

**Hon'ble Judges :** Mr. Sureshwar Thakur, J.

**Bench :** Single Bench

**Advocate :** Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate, for the Appellants; Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate, for the Respondents Nos. 1 and 2

**Final Decision :** Dismissed

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## Judgement

Sureshwar Thakur, J. - The instant appeal stands directed against the impugned judgement and decree of the learned Additional District Judge, Shimla, Himachal Pradesh, whereby, he reversed the verdict recorded by the learned trial Court qua the defendants holding ownership of 13.13 bighas of land comprised in Khasra No. 304/236/85/2 situated in Mauza Anu, Tehsil Theog, District Shimla.

However, it maintained the verdict of the learned trial Court whereby it refused to accord injunction qua the aforesaid land qua the plaintiffs. The plaintiffs? standing aggrieved by the rendition of the Learned Additional District Judge concert through the instant appeal to seek reversal of the judgement and decree of the learned

Additional District Judge, Shimla.

2. The facts necessary for rendering a decision on the instant appeal are that the plaintiffs filed suit for permanent prohibitory injunction restraining the defendants from interfering in any manner whatsoever with the ownership and

possession of the plaintiffs over the land measuring 19 bighas 14 biswas, comprised in Khata Khatauni No. 2/2, Khasra No. 304/236/85/2 min, measuring 13.1 bighas and Khasra No. 92 min measuring 6.13 bighas as per jamabandi for the year 1977-78 of Mauza Annu, Tehsil Theog, District Shimla, Himachal Pradesh. There are also averments in the plaint that plaintiffs purchased the aforementioned suit land from Shri Devinder Chand son of Sh. Randhir Chand vide registered sale deed for consideration of Rs.24,300/- and possession of the whole land was delivered to the plaintiffs except one small field. Plaintiffs are in peaceful possession of the suit land since 28th March, 1981. The defendants tried to interfere with the peaceful possession of the plaintiffs on 10th April, 1981 when they were ploughing the fields and at that time threatened the plaintiffs to take forcible possession of the suit land.

3. The suit of the plaintiffs was resisted and contested by the defendants and they filed written statement wherein the defendants have denied that the plaintiffs had purchased land in suit from Davinder Chand. The defendants specifically denied the possession of the plaintiffs over the suit land. It has also been alleged that Davinder Chand, the original owner was not competent to sell the land in suit, as the land in suit is in excess of the permissible limits under the provisions of the H.P. Ceiling Act. Hence, the same is in contravention of the provisions of the said Act and same is void and inoperative. It was also alleged on behalf of the defendants that out of 49 bighas 13 biswas of land belonging to Davinder Chand, the defendants are in possession of 13-13 bighas of land comprised in Khasra No. 304/236/85/2 since the time of their father as tenant in lieu of services as rent.

The defendants also annexed the Tatima of this parcel of land. The defendants have constructed four shops at the cost of Rs.25,000/- The shops are also over this parcel of land.

The defendants have sowing and cultivating the part of the suit land mentioned above. The defendants have also denied the other allegations made in the plaint and it has also been alleged that the police had also visited the spot and maize which was sown by the defendants was found damaged. The defendants have also filed an application under Section 37 of the H.P. Land Revenue Act before the Tehsildar, Theog for correction of entries.

4. On the pleadings of the parties, the trial Court struck following issues inter-se the parties at contest:-

(1) Whether the defendants are owners in possession of the land in dispute, as alleged? OPD.

(2) Whether the plaintiffs are entitled to the relief of injunction, as prayed for, OPP.

(3) Whether the sale in favour of the plaintiffs is void, as alleged. OPD.

(4) Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court partly dismissed the suit of the plaintiffs besides the learned First Appellate Court partly modified the appeal preferred therefrom before it by the plaintiffs.

6. Now the plaintiffs/appellants instituted the instant Regular Second Appeal before this Court, assailing the findings recorded in its impugned judgment and decree by the learned first Appellate Court. When the appeal came up for admission on 09.09.2003, this Court admitted the appeal on the hereinafter extracted substantial question of law:-

1. Whether the learned Additional District Judge misread and misinterpreted the ratio in Chuniya Devi's case to hold that the question of tenancy was to be determined by the Land Reforms Officer and Civil Court has no jurisdiction? Substantial question of law.

7. The plaintiffs/appellants acquired title to the suit land under sale deed Ext.PW-1/A executed inter se them and one Devinder Chand. Both the Courts below on traversing through the evidence on record concluded of the defendants/respondents holding possession of 13.13 bighas of land comprised in Khasra No. 304/236/85/2 situated in Mauza Anu, Tehsil Theog, District Shimla. In the Courts below concluding of the defendants holding possession of 13.13 bighas of land had thereupon ousted the play of depictions in the revenue entries qua the plaintiffs/appellants holding recorded possession of the aforesaid tract of land. Needless to say of both the learned Courts below in concluding qua the prima donna factum aforesaid had repelled besides belied the presumption of truth garnered by the apposite revenue entries wherein a display to the contrary is held. The learned counsel for the appellants/plaintiffs has contended qua the inference drawn by the learned Courts below in disimputing sanctity to the reflections occurring in the apposite revenue records qua the plaintiffs/appellants holding possession of a tract of 13.13 bighas of the suit land standing untenably anchored upon Ext.DW-5/A comprising an affidavit sworn by one Kirpa Ram an attorney of Mathura Devi, Rani Sahiba of Dhandi wherein revelations stand displayed of one Budhi Singh standing inducted as a tenant in the suit land in lieu of personal services rendered to her. He contends qua the untenability of reliance placed thereupon by the learned First Appellate Court being garnerable from the factum of there existing no evidence in portrayal of Rani Sahiba of Dhandi constituting Kirpa Ram as her attorney whereupon he concerts to foist an inference of his affidavit Ext.DW- 5/A holding no succor. The contention aforesaid reared by the counsel for the appellants for concomitantly rearing a formidable clout qua hence reliance placed thereupon by the learned First Appellate Court for disimputing sanctity to the apposite reflections in the revenue records vis-à-vis the plaintiffs suffering enfeeblement, enjoined upon them to adduce conclusive evidence emanating from the relevant records held with the Sub Registrar concerned magnificatory of Kirpa Ram not under any registered power of attorney executed by Rani Sahiba of Dhandi standing constituted therein as

her attorney. However, the aforesaid evidence stands unadduced. Conspicuously, hence an apt conclusion warranting ensual therefrom is of Kirpa Ram standing constituted as an attorney by Rani Sahiba of Dhandi. In aftermath, reliance placed by the learned First Appellate Court upon Ext.PW-5/A holding pronouncements therein by Kirpa Ram while his holding the capacity of an attorney of Rani Sahiba of Dhandi qua the latter inducting one Budhi Ram father of the defendants as a tenant in the suit land in lieu of personal services rendered by him qua her standing not divested of any efficacy. Also reliance thereupon by the learned First Appellate Court to displace the sanctity of the apposite reflections in the apposite revenue records depictive of the plaintiffs holding as owners possession of the suit land obviously not suffering from any vice of its meteing reverence to a discardable piece of evidence. Furthermore in his testification even PW-1 Devinder Chand has not made any proclamation qua Kirpa Ram who swore affidavit Ext.DW-5/A not holding the relevant capacity to pronounce therein qua his standing constituted by Rani Sahiba of Dhandi as her attorney. His reticence qua the prima donna factum aforesaid read in coagulation with non adduction of the aforesaid best evidence stamps a firm inference of Kirpa Ram who swore Ext.DW-5/A standing constituted by Rani Sahiba of Dhandi as her attorney also his while making communications therein of his principal inducting Budhi Ram as a tenant in the suit land standing clothed with a virtue of solemnity.

8-9. Dehors the leanings by the First Appellate Court upon Ext.DW-5/A for belittling the credence of the apposite reflections in the relevant revenue records, it had also ridden them of their truth rather had falsified them by placing reliance upon Ext.DW-9/C comprising the apposite registration by the authority concerned of a small scale industrial unit set up by the defendant in a part of the contentious tract hereat of the suit land. Also the learned First Appellate Court in concluding of the defendants holding possession of the contentious tract of the suit land placed reliance upon Ext.DW-11/A exhibit whereof stands issued by the Divisional Forest Officer vis- &grave;-vis the defendant No.2. Accentuated vigour to the aforesaid conclusion drawn by the learned First Appellate Court qua the defendants holding physical possession of 13.13 bighas of land is lent by the testification of DW-2 who has made articulations therein qua the defendant Jeet Singh holding his house upon the suit land also his saw mill standing located thereupon. Furthermore a loud display is made in Ext.D-1 exhibit whereof comprises the order of the Tehsildar concerned rendered on an application laid there before by the aggrieved for correction of revenue entries for manifesting therein the factum of the defendants holding physical possession of 13.13 bighas of land depicted in Tatima D-2. His affirmative findings qua the facet aforesaid vis-&grave;-vis the defendants remained un-assailed nor stood concerted to stand bereft of veracity by the plaintiffs adducing cogent evidence in rebuttal thereto. Consequently, depictions occurring in Ext.D-1 and Ext.D-2 qua the defendants holding physical possession of land measuring 13.13 bighas held in Khasra No. 304/236/85/2 acquire conclusivity. Reliance by the learned First

Appellate Court on Ext.DW-5/A when stands concluded by this Court to stand not ingrained with any infirmity would not foist this Court to erect a conclusion of the defendants succeeding in firmly clinching the trite prima donna factum of their predecessor in interest Budhi standing inducted as a tenant in the suit land in lieu of personal services rendered by him to its erstwhile owner nor would this Court even if it finds the relevant entries displayed in the apposite revenue records holding no congruity with Ext.DW-5/A hence proceed to order for vestment of proprietary rights qua the land measuring 13.13 bighas comprised in Khasra No. 304/236/85/2 vis-a-vis the defendants, conspicuously when a statutory bar stands constituted in sub-section (4) of Section 104 of the H.P. Tenancy and Land Reforms Act against this Court rendering any adjudication qua the factum of the defendants holding the suit land as tenants given their predecessor in interest purportedly standing inducted as a tenant therein by its erstwhile owner also significantly when any rendition of a verdict thereupon stands vested within the exclusive jurisdictional domain of the Land Reforms Officer besides when the Land Reforms Officer concerned alone holds jurisdictional competence, to, on his concluding qua the defendants establishing the occurrence of continuance of tenancy qua the suit land in their favour since their predecessor-in-interest, confer upon them concomitant vestment of proprietary rights qua it where after the Civil Court concerned may on its standing motioned by the aggrieved, on existence of palpable evident display qua in his making his rendition qua the facets aforesaid his making a gross departure from the principles of natural justice, may hence interfere with his findings. Consequently, when there occurs before this Court no rendition of the Land Reforms Officer qua the facet aforesaid significantly also when he stands exclusively vested with the apposite jurisdictional domain to clinch findings qua the facet of the defendants since their predecessor in interest holding the suit land as tenants also qua thereupon their standing entitled to statutory conferment of proprietary rights thereon, fetters this Court to place any reliance thereupon for foisting any conclusion qua hence the defendants sustaining their espousal qua their predecessor in interest standing inducted as a tenant in the relevant tract of the suit land by its erstwhile owner in lieu of personal services rendered by him to her, contrarily this Court would obviously leave the aforesaid facet of controversy to be open for adjudication before the Land Reforms Officer concerned on the defendants constituting an apposite application there-before.

10. As an apt sequitur this Court would restrain to render a decree upon the defendants qua theirs delivering vacant possession of the suit land, as any rendition thereof would frustrate any endeavour of the defendants to before the Land Reforms Officer concerned sustain their plea qua theirs since their predecessor in interest holding the relevant tract of the suit land as tenants also would forestall theirs staking on theirs succeeding there before qua the facet aforesaid of hence theirs standing entitled to vestment of statutory proprietary rights thereupon. Also the further constraint which precludes this Court to render upon the defendants a decree of possession qua the suit land hereat rests upon

the plaintiffs/appellants not in the suit making an apposite prayer for a decree of possession being rendered qua the suit land vis-à-vis them. The rigour of the aforesaid constraint though stands canvassed by the learned counsel for the plaintiffs to stand both relaxed also its tenacity standing whittled down by his resting a contention heretofore, of this Court holding a plenary implicit jurisdiction to mould relief of possession qua the suit land vis-à-vis the plaintiffs. However, the aforesaid submission is ill-founded also is in gross transgression of the apposite statutory mechanism contemplated in the Code of Civil procedure where within he held a right at the apposite stage to make resort thereto for getting an apposite amendment to the relief clause of the plaint. In giving leverage to the contention for the plaintiffs/appellants qua this Court holding a plenary implicit jurisdiction to mould the apposite relief vis-a-vis the plaintiffs would detract the manifest salutary purpose behind the enactment of the relevant mechanism in the Code of Civil Procedure also would beget infraction of its relevant apposite provisions prominently when resort thereto by the plaintiff for the relevant purpose is preemptory, contrarily any whittling down of their statutory vigour qua the facet aforesaid would render them to stand relegated to the realm of obscurity besides redundancy, legal mishap whereof stands enjoined to be obviated by this Court. The further reason for this Court dispelling the contention of the plaintiffs/appellants for moulding qua the plaintiffs relief of possession qua the suit land stands founded upon the factum of the plaintiffs/appellants despite moving an application before the First Appellate Court for getting an amendment to the relief clause by incorporating therein the relief of possession qua the suit land yet theirs not perseveringly pursuing the aforesaid application rather theirs as pronounced by an order rendered by the First Appellate Court on 4.4.1988 theirs evincing there-before gross uninterestedness in prosecuting it, constraining it to dismiss it. The proclamation occurring in the order of the First Appellate Court pronounced on 4.4.1988 upsurges a visible display of the plaintiffs/appellants abandoning the aforesaid concert whereupon they are estopped to ventilate heretofore qua theirs holding any leverage to ask for affording qua them any relief of possession qua the suit land. Since the aforesaid statutory mechanism vested in the plaintiffs for begetting an amendment to the relief clause of the suit stood availed by them where after it stood abandoned also constitutes an estoppel against them arising from theirs waiving the relevant statutory mechanism, mechanism whereof alone foisted in them a right to claim a relief of possession qua the suit land whereas theirs extantly heretofore in the garb of making a specious plea of this Court holding an inherent jurisdiction to mould relief of possession vis-à-vis them qua the suit land make an espousal qua it standing granted qua them, conspicuously when any imputation of validation to the aforesaid contention would bring an avoidable conflict with the apt statutory mechanism. Upshot of the above discussion is of an inherent right vesting in a Court to mould relief only when the moulded relief as asked for does not either change the complexion or nature of the suit nor infringe the settled rights acquired under a conclusive judicial rendition by the opposite party. However, when hereat the complexion

besides the structure of the suit stands concerted to be materially altered also when a settled right acquired by the opposite party under a conclusive judicial verdict is strived to be unsettled, obviously this Court holds no jurisdiction to mould the relief qua the plaintiff also when the apt mechanism contemplated in the Civil Procedure Code for moulding of relief though stood resorted to where after it stood waived, cannot clothe in the plaintiff any legal bestowment qua his espousal for moulding the relief of possession qua the suit land warranting vindication. In sequel, when the relief of possession stood not asked for in the plaint rather when the apt venture for its being asked was by theirs resorting to the apt mechanism incorporated in the Civil Procedure Code, mechanism whereof despite resort thereto by them stood waived, forestalls the plaintiffs to canvass qua this Court holding jurisdiction to modify relief of possession vis-a-vis the plaintiffs.

11. In view of the above discussion, I find no merit in this appeal, which is accordingly dismissed and the judgment and decree rendered by the learned Additional District Judge is maintained and affirmed. Substantial question of law is answered against the plaintiffs. Decree sheet be prepared accordingly. No costs.