(2009) 06 SHI CK 0027

In the High Court Of Himachal Pradesh

Rani Chander Kanta and Others — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 24

Citation : (2009) 06 SHI CK 0027

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The plaintiffs have come in appeal against judgement, decree dated 30.4.1997 passed by Additional District Judge, Shimla in Civil Appeal No. 54-S/13 of 95/1989 allowing the appeal of the respondents/ defendants and dismissing the suit of plaintiffs/ appellants after setting-aside the judgement, decree dated 31.5.1988 passed by Senior Sub Judge, Shimla in Case No. 46/1 of 1983-85.

2. The facts in brief are that appellants had filed a suit for declaration that they are owners in possession of property known as "Spring Field Estate" including the buildings and lands measuring 11435.75 Sq. Yards comprised in khasra Nos. 233, 233/1, 233/3, 234/4, 233/6 and 233/7 situated in Shimla East and included in the assessment list for the year 1942-47, the order dated 30.8.1981 of Financial Commissioner is illegal, void and ultra-vires.

3. The pleaded case of the appellants is that they are the successors-in-interest of late Raja Dhian Singh of Sheikhupura. The appellant No. 1 is widow, appellants No. 2 and 3 are the sons of late Raja Dhian Singh, who owned landed and other immovable properties at Sheikhupura now in Pakistan. Raja Dhian Singh after partition of the country in the year 1947 had migrated to East Punjab and settled at Shimla. He died in the year 1957 leaving behind the appellants as his heirs.

4. The "Spring Field Estate" was owned by one Mohd. Yahya Khan. Raja Dhian

Singh had taken on rent the entire "Spring Field Estate" including the buildings and land measuring 11435.75 Sq. Yards on Rs. 25/- per annum from Mohd. Yahya Khan in the name of his wife. The property which was taken on rent from Mohd. Yahya Khan was included in the assessment list for the year 1942-47 of Municipal Committee, Shimla.

5. Mohd. Yahya Khan had migrated to Pakistan and "Spring Field Estate" became evacuee property. The property vested in the custodian, who continued to receive the rent from late Raja Dhian Singh as the property was allotted by the custodian to Raja Dhian Singh being the previous occupant of the property. The "Spring Field Estate" came into compensation pool u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, the Act). In the year 1954 Rehabilitation Department through Regional Settlement Commissioner, Jullundur invited tenders for the sale of "Spring Field" described as property No. 268/5. The tender of Raja Dhian Singh for the said property was accepted on 3.12.1954 and Raja Dhian Singh gave his consent for the purchase of "Spring Field" at Rs. 40,000/- vide letter dated 10.12.1954. On 3.2.1955 Regional Settlement Commissioner, Jullundur had issued letter showing that Raja Dhian Singh had purchased evacuee house No. 64 Spring Field evacuee No. 268/5, Shimla East for a consideration of Rs. 40,000/-.Thereafter Raja Dhian Singh had long correspondence with the authorities but in the meantime, he died on 2.2.1957.

6. The sale certificate of the property was issued on 24.3.1976 describing the property No. 265/5 "Spring Field" Shimla East. It was alleged that department was interchangeably using the property No. as 265/5 or 268/5. Raja Dhian Singh had purchased "Spring Field" not by way of public auction but by way of tender as such Rehabilitation Department instead of sale certificate issued conveyance deed on 5.10.1977 of the property, which was purchased by Raja Dhian Singh. The appellants have pleaded that deed of sale shall be deemed to have come into force on the date of acceptance of tender i.e. 10.12.1954.

7. On receipt of sale certificate the appellants had approached the Revenue and Municipal Authorities to enter their names as owners in respect of "Spring Field Estate" by way of mutation. The municipal authorities, however, objected that the boundaries of the Estate have not been given properly, therefore, the appellants approached the Rehabilitation Authorities to give full description of the properties transferred to the appellants. The Rehabilitation Department through Managing Officer, Una issued another certificate to the appellants giving the description of the property as under:

T.No. 268/5 | North: Other houses Spring field | South: Other houses. Shimla East | East: Down Hills Area 2786 Sq. Yds. | West: Road.

The area 2786 Sq. yards added in the sale deed was wrong and not in accordance with the factual position inasmuch as the appellants through their predecessor Raja Dhian Singh had purchased the whole estate of Spring Field.

8. On 15.7.1970, Himachal Pradesh Government had issued notification u/s 4 of the Land Acquisition Act, 1894 for acquisition of a part of spring field. The appellants had filed their claim on 12.11.1970. The Collector made the award on 5.6.1971 fixing the compensation to be paid to the owners.

9. On the representation of the appellants, Chief Settlement Commissioner directed the Revenue Officer as well as the Rehabilitation Department Officer to go to the spot and to measure the area of Spring Field. The Chief Settlement Commissioner treated the representation of the appellants as revision u/s 24(1) of the Act but on 25.6.1979 wrongly held that the area sold according to the alleged valuation comes only 2786 Sq. yards against actual possession of appellants on spot on an area measuring 3836 Sq. yards. He directed that appellants should pay price of difference of area i.e. 1050.06 sq. yards at the rate of Rs. 4/- per square yard according to the reserved price.

10. The appellants filed review petition against the order dated 25.6.1979 of the Chief Settlement Commissioner. The Chief Settlement Commissioner decided the review on 7.5.1980 holding that according to the valuation papers, the area sold was 2876 sq. yards but appellants were entitled to transfer of remaining area measuring 8649 sq. yards also at the rate of Rs. 4/- per square yard. The Managing Officer against the order dated 25.6.1979 passed by the Chief Settlement Commissioner purportedly filed petition u/s 33 of the Act before Financial Commissioner (Revenue) Appeals-cum-Secretary (Relief and Rehabilitation) to the Government of Himachal Pradesh vested with the powers of Government of India u/s 33 of Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, Financial Commissioner). The appellants had also filed petition u/s 33 of the Act before Financial Commissioner against the orders dated 25.6.1979 and 7.5.1980 of the Chief Settlement Commissioner. The Financial Commissioner decided petitions of the department and the appellants by common order dated 30.8.1981 and affirmed order dated 25.6.1979 of Chief Settlement Commissioner. The Financial Commissioner set-aside the order dated 7.5.1980 of the Chief Settlement Commissioner. It has been pleaded that order dated 30.8.1981 of the Financial Commissioner is illegal and without jurisdiction. The appellants have projected the case that they had purchased entire Spring Field Estate denoted by boundaries having area 11435.75 sq. yards.

11. The respondents contested the suit by filing joint written statement and took preliminary objections of jurisdiction of the civil court to try the suit, limitation, maintainability, non-joinder of necessary parties. On merits, it was admitted that appellants are the successors of late Raja Dhian Singh. It was pleaded that Rani Chander Kanta was in possession of Spring Field house and not of whole estate. She was paying Rs. 171.14 annas rent per month in respect of Spring Field house only. The tenders were invited for the sale of Spring Field house described as property No. 268/5. It was pleaded that correct conveyance deed was issued on 5.10.1977 mentioning the area and boundaries according to valuation record.

The appellants are entitled to 2786 sq. yards including main building, out houses, latrine etc. and not whole of the estate. Tarik Cottage, Coal Shed were sold to different persons. It was denied that appellants were sold entire spring field estate or entire spring field estate was included in the tender list. It was contended that Chief Settlement Commissioner has full powers to hear the parties u/s 24 of the Act, similarly Financial Commissioner was competent to pass order u/s 33 of the Act. Spring Field house bearing 268/5 measuring 2786 sq. yards was sold and the area in revision was increased to 3836.06 sq. yards on payment of additional payment for an area 1050.06 sq. yards at the rate of Rs. 4/sq. yard.

12. The appellants filed replication to the written statement, wherein they denied the stand of respondents No. 1 and 2 and reasserted their case which was set up by them in the plaint. On the pleadings of the parties, the following issues were framed:

1. Whether this Court has no jurisdiction to try the suit in view of the provisions of the Displaced persons (Compensation & Rehabilitation) Act, 1954? OPD.

2. Whether the plaintiffs suit is barred by limitation as alleged? OPD.

3. Whether the plaintiff is the owner in possession of the Estate known as Spring field measuring 1143575 sq. yards vide sale certificate dated 3.2.1955 as alleged, and the suit is maintainable in the present form? OPP

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

5. If issue No. 3 is proved, whether the rehabilitation authorities were competent to cancel and amend the sale certificate dated 3.2.1955 issued in favour of the late Raja Dhian Singh? OPD.

6. Whether the order dated 30.8.1981 of the Financial Commissioner is without jurisdiction and illegal, ultra- vires and void, as alleged? OPD.

7. If issue No. 3 is not proved then of what area of the Spring field is the plaintiff owner and with what boundaries and description? OP Parties.

8. Relief.

The Senior Sub Judge under issue No. 1 has held that the court has jurisdiction to try the suit, issues No. 2, 4 and 5 were answered in negative, issues No. 3, 6 and 7 were answered in affirmative and the suit was decreed on 31.5.1988. The respondents filed an appeal which was accepted by Additional District Judge on 30.4.1997 and the suit was dismissed, hence second appeal, which has been admitted on the following substantial questions of law:

(i) Whether the learned Additional District Judge could have reversed the findings of the learned Trial Court on the issue of limitation when the said findings were not challenged by the respondents in appeal before it.

(ii) Whether after the acceptance of offer of late Raja Dhian Singh given vide

Exh. P.8 and accepted vide Exh. P.9, the property in dispute ceases to be an evacuee property or in any case after the issuance of Exh. P.10, the property ceases to be an evacuee property and thus respondents whether could have amended Exh. P.10 by incorporating the area of Spring Field evacuee No. 268/5 as 2786 Sq. Yds. In Exh. P.11.

(iii) Whether non-production of basic register form No. 10 prepared under Ruler 33 of Administration of Evacuee Rules was not fatal to the case set up by the defendants.

(iv) Whether non-production of basic register form No. 10 did not prove the case of the plaintiffs in view of the evidence lead by the plaintiffs.

(v) Whether the learned Additional District Judge could have held that the property was sold on the basis of valuation register especially when Rule 24 of Displaced Persons (Compensation and Rehabilitation) Rules came into force on 21.5.1955 and before that there was no rule for preparation of valuation register.

(vi) Whether the learned Additional District Judge could have taken note of the valuation register when the same or its copy was not produced or proved in accordance with law.

(vii) Whether any admission made by the witnesses of defendants in favour of the plaintiffs were not binding on the defendants and whether the court was not bound to hold that such admissions in favour of the plaintiffs proved the case of the plaintiffs.

(viii) Whether the demarcation carried out by DW-2 which was not in accordance with law and the demarcation carried by the Chief Settlement Commissioner on 20.5.1979 in the absence of the appellants was binding on the appellants or not and the courts below, could have relied upon the same.

(ix) What is the effect of the judgement of the learned Additional District Judge on the case of the plaintiffs if it is held that the same is against the pleadings and evidence of the parties.

(x) Whether the learned Additional District Judge could have ignored from consideration the various authorities cited before it at the bar and could have ignored the various provisions of law.

13. Heard and perused the record. Mr. Vijay Pandit, learned Counsel for the appellants has submitted that the appellants through their predecessor Raja Dhian Singh had purchased entire "Spring Field Estate" with building and land measuring 11435.75 sq. yards and not 2786 or 3876 sq. yards. The sale was concluded in favour of Raja Dhian Singh on 17.12.1954 when offer dated 10.12.1954 of Raja Dhian Singh for spring field estate was accepted by Regional Settlement Commissioner, Jullundur and in pursuance there of sale certificate dated 3.2.1955 was issued in favour of Raja Dhian Singh. The sale of "Spring Field Estate" was again confirmed on 24.3.1976 by Naib Tehsildar (Sales), Una -

cum- Managing Officer, Una, but surprisingly without any authority Tehsildar (Sales)-cum-Managing Officer, Una on 5.5.1976 had informed that only 2786 sq. yards bounded by boundaries mentioned in the letter dated 5.5.1976 was sold. This was repeated in conveyance-deed dated 5.10.1977. The sale of entire "Spring Field Estate" in favour of Raja Dhian Singh is supported by contemporaneous record. He has submitted that the suit of the appellants is within limitation. The Additional District Judge has gone beyond the pleadings and evidence in dismissing the suit. The demarcation carried out by Chief Settlement Commissioner on 20.5.1979 is wrong. The respondents had not produced basic register form No. 10 prepared under Rule 33 of the Administration of Evacuee Property (Central) Rules, 1950. Mr. A.K. Bansal, learned Additional Advocate General appearing on behalf of respondent No. 2 has supported the impugned judgement, decree. Mr. M.A. Khan, Central Government Counsel appearing on behalf of respondent No. 1 has adopted the submissions advanced on behalf of respondent No. 2.

14. The grievance of the appellants in substantial question of law No. 1 is that Senior Sub Judge had returned findings on issue No. 2 of limitation in favour of appellants but Additional District Judge has erred in returning the findings on limitation against the appellants without specific challenge to this effect made by respondents in the lower appellate court. The respondents in the lower appellate court had taken the ground that judgement and decree passed by the Senior Sub Judge, Shimla is unjust and is liable to be set-aside. A ground was also taken that trial court has not correctly appreciated the evidence on record and has erred in disbelieving the material put forth by the appellants. In any case, Section 3 of the Limitation Act, 1963 provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. In light of Section 3, the Additional District Judge has committed no illegality in going into the question of limitation even if the ground of limitation was not specifically taken by the respondents in the grounds of appeal before the lower appellate court. The point of limitation was very much in issue and the Additional District Judge has decided the issue of limitation on the basis of material on record.

15. The appellants in the plaint have pleaded that cause of action arose to them on 10.12.1954, 3.2.1955, 5.10.1977, 25.6.1979 and finally on 30.8.1981. The suit is for declaration that appellants are owners in possession of the suit property and the order of Financial Commissioner dated 30.8.1981 is illegal, ultra-vires and void. The appellants themselves had invoked the jurisdiction of the Financial Commissioner under the Act and now in the suit they have pleaded that the order dated 30.8.1981 of the Financial Commissioner is without jurisdiction and therefore, void. The order dated 30.8.1981 of Financial Commissioner good or bad is an obstruction for granting relief to the appellants. The Financial Commissioner u/s 33 of the Act has the power of Central Government. Article 100 of Limitation Act provides one year limitation to alter or set-aside any decision or order of a civil court in any proceedings other than a

suit or any act or order of an officer of the government in his official capacity. The limitation starts under Article 100 from the date of final decision or order. In the present case, the final order of Financial Commissioner under the Act was passed on 30.8.1981 and the suit was filed on 29.3.1983 and therefore, time barred. The Hon''ble Supreme Court in State of Punjab and Others Vs. Gurdev Singh, has held that even a void order is required to be set-aside within limitation.

16. The question of limitation can be considered from another angle also. The appellants had no grievance regarding the area purchased by them through their predecessor till 24.3.1976 when vide Ex. P-11 Naib Tehsildar (Sales), Una-cum-Managing Officer, Una informed appellant No. 1 that sale was confirmed by the Regional Settlement Commissioner on 17.12.1954 (Case No. 265/5 Spring Field, Shimla) for a consideration of Rs. 40,000/-. It is the case of the appellants that vide Ex. P-12 Tehsildar (Sales)-cum- Managing Officer, Una on 5.5.1976 first time disclosed that the area of Case No. 268/5 Spring Field is 2786 Sq. yards with boundaries mentioned in Ex. P-12. Thereafter conveyance deed Ex. P-13 dated 5.10.1977 was executed showing property No. 268/5 Spring Field, Shimla measuring 2786 sq. yards as per boundaries mentioned in Ex. P-13. It is thus clear that on 5.5.1976 and then on 5.10.1977 the appellants were very much informed by the authorities that the area which they had purchased through their predecessor of Spring Field is 2786 sq. yards. The conveyance deed dated 21.8.1979 Ex. P-20 is for an area 3836.06 sq. yards. The appellants were required to file suit for declaration against the stand of the respondents regarding the area of the land within limitation from 5.5.1976 or 5.10.1977 or 21.8.1979 and for such suit limitation of three years is provided under Article 58 of the Limitation Act. The appellants at the most could file suit up to 5.10.1980 or 21.8.1982 but as noticed above, the suit was filed on 29.3.1983. Thus taken from any angle, the suit of the appellants is barred under Article 100 or Article 58 of the Limitation Act. The learned Counsel for the appellants has relied judgement of Punjab & Haryana High Court dated 27.8.2001 rendered in RSA No. 3766 of 1998 Shamsher alias Surinder Singh v. State of Punjab. The learned Counsel for the appellants has supplied only photo copy of the judgement. I have gone through the judgement but on facts, the judgement dated 27.8.2001 is not applicable. The finding recorded by the Additional District Judge on the point of limitation is upheld on additional grounds also and it is held that the suit is not within limitation. The substantial question of law No. (i) is decided against the appellants.

17. The substantial questions of law No. (ii) to (vi) can be disposed of conveniently under one head, therefore, all of them are being taken up collectively for consideration. The grievance of the appellants is that respondents have changed the area of the property purchased by their predecessor and such change was made without jurisdiction. The stand of the appellants is that they had purchased building and land measuring 11435.75 sq. yards of "Spring Field Estate", whereas, the stand of the respondents is that only 2786 sq. yards of

property was sold to appellants which was later on increased to 3836.06 sq. yards vide conveyance deed dated 21.8.1979 Ex. P-20. The respondents have denied that building and land measuring 11435.75 sq. yards was sold to appellants or their predecessor. Ex. P-7 is the invitation to tender for evacuee residential houses at Shimla. At Serial No. 131 of the list the following property is mentioned:

S.No. Name or Evacuee Location Accommodation available (roughly) No. of No. the property

131 Spring 268/5 Shimla Single storeyed. Fourteen rooms Field East 10''x10'' each with out-houses, verandah, kitchen, bath and latrine. Furnished Electricity and water provided.

It is thus clear that what was put to tender was the above described property and none-else. Raja Dhian Singh had offered to purchase the above property for Rs. 40,000/-. In light of above described property in Ex. P-7, heavy burden lies on the appellants to show that they through Raja Dhian Singh had purchased 11435.75 sq. yards of "Spring Field Estate". The expression used in Ex. P-7 invitation to tender is "Spring Field" and not "Spring Field Estate". It appears "Spring Field" is the name of the building in "Spring Field Estate". Therefore, "Spring Field" cannot be equated with "Spring Field Estate".

18. PW 2 Vijay Singh has stated that total area of "Spring Field" including quarter and vacant land is about 10,500 sq. yards. He has denied that they had purchased only "Spring Field" house through tender but his denial is not of any help to the appellants on the face of Ex. P-7 where property put to tender was "Spring Field". In his statement, he has stated that in jamabandi Ex. P-1 Tarik Cottage and Coal Shed have been shown portions of Spring Field. It is not the case of the appellants that they have even purchased Tarik Cottage and Coal Shed which were parts of "Spring Field Estate". The appellants have not given any explanation for omission to claim Tarik Cottage and Coal Shed which were parts of "Spring Field Estate" when they as per their case had purchased entire "Spring Field Estate". This supports the contention of the respondents that Raja Dhian Singh had purchased only "Spring Field" mentioned in tender list Ex. P-7. PW 1 Smt. Chander Kanta has stated that they had purchased building for a sum of Rs. 40,000/-. She could not say whether they had purchased only 2786 sq. yards area. The statement of PW 1 indicates that appellants had purchased "Spring Field" built up structure for Rs. 40,000/-.

19. It has been contended on behalf of the appellants that respondents have not produced form No. 10 prepared under Rule 33 of the Administration of Evacuee Property (Central) Rules, 1950. The Additional District Judge has wrongly held that property was sold on the basis of valuation register. The Displaced Persons (Compensation & Rehabilitation) Rules 1955 came into force w.e.f. 21.5.1955, the valuation of acquired evacuee property in allotable pool is determined under Rule 24 but the sale was concluded before coming into force of Displaced Persons

(Compensation & Rehabilitation) Rules, 1955, hence question of existence of valuation register before the framing of rules does not arise.

20. Rule 33 of the Administration of Evacuee Property (Central) Rules, 1950 provides that all immovable properties taken into possession by custodian shall be recorded in register in form No. 10. I have gone through form No. 10 referred in Rule 33. Column No. 7 of form No. 10 is with respect to accommodation available, number and size of rooms, store rooms, verandah, kitchen, bath room, courtyard etc. The form No. 10 is thus meant for built up portion and courtyard. It is not believable that Spring Field 2786 sq. yards was having courtyard 8449.75 sq. yards (11435.75-2786). The non- production of form No. 10 referred in Rule 33 of Administration of Evacuee Property (Central Rules) 1950 in no way has prejudiced the case of the appellants. In so far as Rule 24 of Displaced Persons (Compensation & Rehabilitation) Rules, 1955 is concerned, the Additional District Judge in para-20 of the impugned judgement has observed that he had looked into the original valuation record and find that same had been prepared well before the suit property had been proposed to be sold through tender. Numeral `4'' of 1954 had been tampered with so as to render the same 1956. The valuation of the suit property had been got done from two registered evaluers well before the same had been put to tender. There is nothing on record to disbelieve the observation of Additional District Judge, which was made by him on the basis of original record. Therefore, it can be safely held that the valuation of the property which was sold to appellants was made before the sale and not in the year 1955 or 1956, as contended on behalf of the appellants.

21. The learned Counsel for the appellants has submitted that sale certificate was issued in favour of the appellants on 3.2.1955 vide Ex. P-10. The sale in favour of the appellants was again certified on 24.3.1976 vide Ex. P-11. The appellants became owners in possession when the sale certificate was issued in favour of Raja Dhian Singh on 3.2.1955. In certificate dated 5.5.1976 Ex. P-12 the description of the property has been given by area measuring 2786 sq. yards bounded by boundaries mentioned in Ex. P-12. The contention of the appellants is that the area has been wrongly mentioned in Ex. P-12 and since boundaries have been mentioned in Ex. P-12, therefore, boundaries will prevail over the area mentioned in Ex. P-12. The submission on its face is attractive but on close scrutiny it is found to be of no help to the appellants. The boundaries mentioned in Ex. P-12 are not definite. Only on the West, road has been mentioned, the description of boundaries on North, South, and East are vague. In these circumstances, the principle that in case of conflict between the area and the boundaries, the boundaries will prevail is not applicable in the facts and circumstances of the present case. In Ex. P-7 invitation to tender the property put to tender was not identified by boundaries. Ex. P-7 makes it clear that Spring Field consisted of 14 rooms 10'' x 10'' each with out houses, verandah, kitchen, bath and latrine, furnished electricity and water provided. It is very clear from Ex. P-7 that single storey house with accessories was put to tender and was purchased by Raja Dhian Singh. The accommodation mentioned in Annexure P-7

of Spring Field even if liberally construed in that case also it will not come to 11435.75 sq. yards, as claimed by the appellants. On the contrary, there is substance in the stand of the respondents that what was sold to Raja Dhian Singh was building and land measuring 2786 sq. yards, which was later on increased to 3836.06 sq. yards as per Ex. P-20. It is significant to note here that in the prayer of the suit, the appellants have not sought any relief against conveyance deed dated 21.8.1979 Ex. P-20. The appellants in the suit have confined their grievance to conveyance deed Ex. P-13 dated 5.10.1977. Once the appellants have no grievance against conveyance deed Ex. P-20 that means the appellants have accepted the area measuring 3836.06 sq. yards sold to them vide conveyance deed Ex. P-20. The Additional District Judge has rightly appreciated the material on record. The substantial questions of law No. (ii) to (vi) are decided against the appellants.

22. On behalf of the appellants, the alleged admission of the witnesses of the respondents having material bearing on the issue involved have not been specifically pointed out. Likewise, nothing has been pointed out how the impugned judgement is against the pleadings and evidence of the parties. Therefore, substantial questions of law No. (vii) and (ix) are decided against the appellants.

23. Ex. DW 2/A dated 31.8.1978/ 1.9.1978 is the report of Tehsildar, Municipal Corporation, Shimla. DW 2 Balwant Rai was Tehsildar Shimla and he carried out the demarcation and proved demarcation report Ex. DW 2/A. DW 2 in his statement has stated that at the time of demarcation Vijay Singh, Rani Chander Kanta and representatives of Rehabilitation Department were present. The demarcation was carried out as per site plan of custodian department. In the cross-examination, he has stated that revenue record, copy of musabi were with him. DW 2 was not cross-examined on any point so as to highlight how demarcation carried out by him was not proper. The order dated 25.6.1979 Ex. P-14 of Chief Settlement Commissioner indicates that there was difference between demarcation given by Sales Unit, Una and Tehsildar, Municipal Corporation, Shimla. Therefore, he only verified the measurement on the spot on 20.5.1979. The purpose of visit of Chief Settlement Commissioner was with respect to the verification of two reports on the spot and not to carry out separate and independent demarcation. In these circumstances, it cannot be said that Chief Settlement Commissioner on 20.5.1979 had carried out independent demarcation in absence of appellants. Moreover, at the time of hearing, the learned Counsel for the appellants had not made any submission on substantial question of law No. (viii). The substantial question of law No. (viii) is decided against the appellants.

24. The substantial question of law No. (x) does not arise from the case set up by the appellants nor the judgements cited at the bar and allegedly ignored by the Additional District Judge in the impugned judgement have been pointed out. Therefore, substantial question of law No. (x) is decided against the appellants.

25. The Additional District Judge has properly appreciated the material on record. It has not been pointed out that in the impugned judgement inadmissible evidence has been considered or material evidence having bearing on the merits of the case has been ignored. In second appeal, evidence cannot be re-appreciated. The Additional District Judge on the basis of evidence on record has recorded a finding that only an area measuring 3836 sq. yards was sold to appellants. The conveyance deed dated 21.8.1979 Ex. P20 also indicates that an area measuring 3836.06 sq. yards was sold to the appellants. This conveyance deed has not been questioned by the appellants in the suit. The suit of the appellants was rightly held to be barred by time by the Additional District Judge. No case for interference has been made out.

26. No other point was urged.

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

