

---

**(2010) 11 SHI CK 0142**

**In the High Court Of Himachal Pradesh**

**Case No : Regular Second Appeal No. 144 of 2000**

Rashpal Singh and Others

APPELLANT

Vs

Ramesh Chand and Others

RESPONDENT

---

**Date of Decision : 03-11-2010**

**Acts Referred:**

**Citation : (2010) 11 SHI CK 0142**

**Hon'ble Judges : Surjit Singh, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

---

## **Judgement**

Surjit Singh, J.—This appeal by appellants Rashpal Singh, Lekh Raj, Leela Devi and Raj Kumari, legal heirs of Kishan Dass, defendant No. 3 in the original suit, is directed against the judgment and decree dated 20th November, 1999 of learned District Judge, whereby appeal filed by late Kishan Dass against the judgment and decree dated 23rd June, 1993 of learned Sub Judge 1st Class, Court No. 1, Amb, has been dismissed.

2. Respondent Ramesh Chand, hereinafter called plaintiff, filed a suit for issuance of permanent prohibitory injunction, restraining respondent Gurbax Singh, Kishan Dass (predecessor-in-interest of the present appellants) and Raksha Devi, wife of said Gurbax Singh, from interfering in his possession over 30 Kanals 1 Marla land bearing Khasra No. 1930, situate in village Pirthipur, Tehsil Amb, District Una, hereinafter called suit land. It was alleged by the plaintiff that vide sale deed, executed in the year 1983, he had purchased 10 Kanals land, out of Khasra No. 1930, from Gurbax Singh and that in the same year said Gurbax Singh transferred possessory title of another 20 Kanals area, out of Khasra No. 1930, in his favour, through a writing executed on 27th June, 1993, for a consideration of `5,000/-. It was claimed that the plaintiff had been in possession of 30 Kanals 1 Marla area since 1983. Defendants, abovenamed, were alleged to be causing interference in possession of the plaintiff, without any right, title or interest.

3. Common written statement was filed by Gurbax Singh and the predecessor of the present appellants, namely Kishan Dass, in which it was denied that the plaintiff was in possession of an area in excess of 10 Kanals land, out of Khasra No. 1930. It was conceded that there had been sale of 10 Kanals area, out of Khasra No. 1930, in favour of the plaintiff. Rest of the allegations were denied.

4. Trial Court, on the basis of evidence adduced by the parties as also admission by Gurbax Singh and Kishan Dass, with respect to sale of 10 Kanals area, held that possession of 30 Kanals 1 Marla area was with the plaintiff. Consequently, suit was decreed and decree for permanent prohibitory injunction passed. Appeal filed by the predecessor of the appellants in the Court of learned District Judge stands dismissed.

5. Present appeal was admitted on the following substantial questions of law:

1. Whether a decree for injunction can be granted in favour of a stranger/trespasser against the true owner?

2. Whether the impugned judgments are the result of misconstruction and mis-interpretation of documents Ex. P1 and D1, copies of Jamabandies?

3. Whether the impugned judgments are vitiated in view of the entries in the possessory column wherein all the co- owners have been shown to be in possession?

6. I have heard learned Counsel for the appellants as also learned Counsel for the respondent and gone through the record.

7. Entry in Jamabandi for the year 1981-82, copy Ex. P-1, records Gurbax Singh (defendant No. 1) in possession of the entire area of Khasra No. 1930, which is 43 Kanals 1 Marla, as co-sharer. In the column of ownership, Khasra No. 1930 is recorded as Shamlat. Kishan Dass, predecessor of the appellants, is not shown to be in possession of any portion of the suit land. It is admitted by Gurbax Singh as also the predecessor of the present appellants that 10 Kanals land, out of Khasra No. 1930, had been sold in favour of plaintiff Ramesh Chand and his brothers, by Gurbax Singh, in the year 1983.

8. With regard to the possession of Ramesh Chand and his brothers over additional 20 Kanals additional area, there is a writing Ex. PW-2/A, by which Gurbax Singh received a sum of ` 5,000/- and acknowledged that possession was with Ramesh Chand and his brothers. Thus, the jamabandi and the document Ex. PW-2/A show that Ramesh Chand and his brothers are in possession of 30 Kanals 1 Marla area, as claimed in the plaint. There is another document Ex. PA, titled as Razinama. The document is executed between plaintiff Ramesh Chand and defendant Gurbax Singh. It is acknowledged in this document that possession of 20 Kanals had been with Ramesh Chand and his brothers since 1980 and that the fact had been acknowledged by writing dated 27th June, 1983, Ex. PW-2/A.

9. Name of the present appellants or their predecessor nowhere figures in the

Jamabandi or any other record maintained by the revenue authorities. Therefore, their contention, raised in substantial question of law No. 1, that injunction cannot be granted against true owner, is liable to be rejected. Also, their contention that the judgments of the two Courts below are based on misconstruction and misinterpretation of evidence cannot be accepted, in view of the abovestated position. Substantial question of law No. 2 is contrary to the evidence on record. It is only Gurbax Singh, who is recorded in possession of the suit land and not all the members of the proprietary body of the village.

In view of the abovestated position, all the substantial questions of law, on which appeal was admitted, are answered against the appellants and the appeal is dismissed.