

(2012) 07 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 627 of 2007 a/w Regular Second Appeal No. 45 of 2008

Rosy and Others

APPELLANT

Vs

Jusaf and P.O Bhadroya, Basheer Mohamd, Bardu and Jusaf

 State of H.P. Vs Jusaf and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 5

Citation : (2012) 07 SHI CK 0037

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Advocate : Balwant Singh, vice and Mr. Sanjeev Sood in RSA No. 627 of 2007 and Mr. J.S. Guleria, Assistant A.G., in RSA No. 45 of 2008, for the Appellant; Sanjay Jaswal, Advocate, for respondents No. 1to4 and Mr. J.S. Guleria, Assistant Advocate General, in RSA No. 627 of 2007 and Mr. Sanjay Jaswal, Advocate, in RSA No. 45 of 2008, for the Respondent

Judgement

V.K. Ahuja, J.—This judgment shall dispose both the appeals as detailed above filed by the State of H.P. as well as by the appellants/defendants Rosy etc.. Briefly stated the facts of the case are that Jusuf etc. hereinafter referred to as the plaintiffs filed a suit for declaration that they are owners of the land as detailed in the plaint and the relief of Permanent Injunction was also sought as against the defendants-State of H.P. as well as other defendants, Dharmu etc. restraining them from interfering in possession of the plaintiffs. The plaintiffs alleged that they are Gujjar by caste and they never left for Pakistan nor any entry showing the suit land was made declaring it as evacuee property. The suit land was sold by the State to Mahantoo in an auction, who sold it to defendants No. 2 to 14 and the plaintiffs alleged that they were never associated in any transaction and proceedings. Hence, the suit filed by them.

2. It is clear from perusal of the pleadings of the plaintiffs that there is no entry showing the suit land to have been declared as evacuee property. But they never

challenged that the suit property was not evacuee property or could not have been declared, as such, since the procedure prescribed under the Act for declaring it as evacuee property was not followed. The plaintiffs had only challenged that no sale could have been made of the land by the Collector in favour of the Mahantoo and defendants are the purchasers and they had led evidence also to show that they purchased the land. However, this plea was not separately taken that under what provision of law the Collector had sold the suit land without declaring it as evacuee property or under what provision he could effect the sale of the property. The learned trial Court framed as many as 12 issues and there was no specific issue as to whether the Collector could sell the land in an auction, though an issue was framed as to whether disputed land was purchased by the defendants in an auction 50 years back and as to whether defendants are bonafide purchaser of the suit land.

3. While deciding the suit, the learned trial Court clubbed issue No. 2,3 and 10 together and did not give his findings point wise. The plea was raised before the learned appellate Court that since the findings were not given separately under issues No. 2,3 and 10 which were material issues and which should have been given as such the case deserves to be remanded for deciding the issue afresh but the learned appellate Court vide its observations made in para 20 held that by clubbing these issues together no prejudice has been caused since there is an exception under Order 20 rule 5 of C.P.C, wherein the Court can give its findings with reason thereof on each separate issue.

4. My attention has been drawn to the decision of a Division Bench of this Court in Om Prakash and Others Vs. State of Himachal Pradesh and Others, , wherein this question was considered by the Court and in para 12 of the Act, the following observations were made by the Court which are relevant and are being reproduced below:

In the present case, trial Court has framed all the issues and was supposed to give separate findings on each issue, as admittedly the findings upon any one or more of them are not sufficient for the decision of the suit. By simply enumerating the evidence and law and thereafter giving conclusion whereby the case of one party is accepted and the other party is rejected, is no judgment in the eyes of law. In other words, the judgment which does not contain the reasons or grounds on the basis of which the Judge has come to his conclusion/ decision for passing a judgment and decree on the points in issue or controversy, is vitiated. It is all the more necessary, when the judgment is by the Court of fact and is appealable, to avoid unnecessary delay and protracted litigation.

5. It is clear from the perusal of the above decision that the Court should have given its findings separately under all these issues and all these issues were on separate point i.e issue No. 2 was as to whether the plaintiffs were owners of the disputed land and issue No. 3 was whether the entries of the defendants as owners in possession in the revenue record, are wrong and incorrect and issue No. 10 was as to whether the disputed land was purchased by the defendants in

an auction 50 years back and have become owners in possession thereof.

6. I have gone through the findings recorded for all these three issues and a perusal of the same shows that there is no separate discussion as to whether the defendants have purchased the land in auction and have become owners in possession thereof for which there is no specific pleadings or proof in this regard. Therefore, I am not inclined to agree to the observation made by the learned Additional District Judge that since all these issues have been separately discussed under the paras, therefore, it can not be said that the provisions of Order 20 rule 5 C.P.C were complied with.

7. Apart from the above, there are two other grounds which compel me to hold that trial has not been conducted in a proper manner. The first is in regard to the issue of limitation which was framed by the learned trial Court as issue No. 8. But, no findings were given and the Court simply observed that no arguments were advanced and no evidence has been led. The issue of limitation was material, since the defendants have purchased land in an auction in the year 1957 and the plaintiffs had filed a suit on 5.8.1997 and therefore, this was a material issue to be considered and decided by the Court as to whether the plaintiff could file the suit after so many years of the auction vide which the defendants purchased the land. In the absence of those findings, it can not be said that the case was disposed of in a proper manner.

8. Another plea raised by the learned Assistant Advocate General for the State was that the plea of jurisdiction of the Civil Court was taken in the written statement filed by defendant No. 1 before the learned trial Court, but no issue was framed and this plea was also taken in the ground of appeal filed before the learned District Judge as well as before this Court and the substantial question of law has also been framed in that regard by this Court as to whether the Civil Court had jurisdiction or not. But that point was never decided by the learned trial Court or by the learned Appellate Court though it was a material point relating to the jurisdiction of the Court. In case, the proceedings had been conducted under the Evacuee Property Act, it was for the Court to consider under which provisions of the Act, the Civil Court had the jurisdiction or not when there was a provision for appeal also as provided in the Act. In case the land has been sold by the Collector without declaring it as Evacuee Property and no order of the Collector passed under the Act which was under challenge. This point was still to be considered by the Court as to how the Collector could sell the land without it having been declared as evacuee property. All these questions are to be decided by the trial Court and since there are no findings given by the trial Court in regard to the limitation and jurisdiction and the findings had been given under issues No. 2,3 and 10 by clubbing them together as such trial has not been conducted in accordance with law. In view of above discussion, I accordingly hold that I have no option but to remand the case to the learned trial Court for rehearing the parties and the issue in regard to jurisdiction has also been framed as issue No. 12-A as to whether the jurisdiction of the Civil Court was barred and

the learned trial Court shall rehear the parties on these issues and give its findings afresh on all issues including the findings on limitation and jurisdiction. The case is being remanded back for hearing and the issue being framed or sought to be decided are in regard to the limitation and jurisdiction no opportunity shall be given to either of the parties for leading any evidence and the Court shall proceed with the case and decide the case on the basis of the material on record. However, in case any of the parties files an application for additional evidence enclosing therewith the documents required to be proved which may be necessary for just decision of the case, the Court shall be at liberty to decide the application in accordance with law and pass appropriate orders on the application by either party for additional evidence, if any. Parties shall be reheard and case shall be disposed of accordingly within a period of four months from the date fixed for hearing before the learned trial Court being an old case. Parties are directed to appear before the learned trial Court on 6th September, 2012 and the case shall be disposed of within four months from that date. Copy of the judgment alongwith record be returned to the learned trial Court.