
(2011) 08 SHI CK 0196

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 332 of 1997

Rumel Singh

APPELLANT

Vs

General Public of Mohal Baryai Behard and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Himachal Pradesh Land Revenue Act, 1954 — Section 36, 37, 38

Citation : (2011) 08 SHI CK 0196

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Appellant, who is the Plaintiff has filed the present Regular Second Appeal u/s 100 of the Code of Civil Procedure, 1908 assailing concurrent findings of fact recorded by the Courts below. Civil Suit No. 218 of 1988 instituted by the Plaintiff on 8.7.1988, seeking a decree for declaration and permanent prohibitory injunction stands dismissed by the Sub Judge, Ist Class, Dehra, District Kangra, in terms of judgment dated 30.12.1995. Plaintiff's Civil Appeal No. 40-G/XIII-1996, assailing the same stands dismissed by the District Judge, Kangra at Dharamshala in terms of judgment and decree dated 3.10.1997.

2. Present appeal was admitted on the following substantial question of law:

Whether the entries showing the path in dispute in the records has been made in contravention of the provisions of Section 38 of the H.P. Land Revenue Act?

3. Plaintiff filed a suit against the General Public of Mohal Baryal Behard (Defendant No. 1), Ishwar Dass (Defendant No. 2) seeking a decree for declaration and injunction with an alternate prayer of mandatory injunction. According to the Plaintiff he and Dhani Ram (Defendant No. 3) are the owners of the suit land, purchased by them in the year 1964 and as per the revenue record pertaining to the year 1963-64 (Ext. P2), 1968-69 (Ext. P3) and 1973-74 (Ext.

P1) suit land in its entirety is shown to be in their exclusive possession without any entry of Rasta-share-aam (common path), further no public path existed thereupon. However, during the course of settlement proceedings carried out in the year 1978-79, entry in the revenue record was changed by the settlement authorities and common path through the suit land was reflected which is evident from revenue record pertaining to the year 1978-79 (Ext. P-7). Plaintiff alleged that entries were reflected in collusion with revenue authorities, who were inimical to him.

4. Contesting Defendants resisted the suit, inter alia, on the ground that since time immemorial and in any event more than 60 years, residents of 5-7 villages, uninterruptedly and continuously are using the path existing over the suit land. An attempt was made by the Defendants to obstruct the same, but, however, with the intervention of authorities, the matter was sorted out and path restored. In any event, the matter stands conclusively decided by the settlement authorities inasmuch as Plaintiff's application for rectification of the revenue entry (Ext. P-7) stands dismissed vide order dated 30.3.1988 (Ext. D5), which fact was suppressed by the Plaintiff. Thus neither was the suit maintainable nor was Plaintiff entitled to equitable relief prayed for.

5. Based on the pleadings of the parties, trial Court framed the following issues:

1. Whether the Plaintiff is in possession of the suit land and the entries in the record of rights showing it as Rasta-share-aam are wrong, if so, its effect? OPP.

2. Whether the suit is not within time? OPD

3. Whether the suit is bad for nonjoinder of necessary parties? OPD

6. Courts below have concurrently held that the factum of rejection of Plaintiff's application made before the appropriate authority under the revenue laws, in terms of order dated 30.3.1988 (Ext. D5) was suppressed by him. Further on appreciation of evidence led by the parties, the Courts below have held that common path on the suit land existed much prior to the purchase of the suit land by the Plaintiff, which in fact was in use by residents of different villages.

7. For the purpose of deciding the controversy in the appeal, provisions of Sections 36, 37 and 38 of the H.P. Land Revenue Act, 1954 are reproduced as follows:

36. Marking of that part of the periodical record which relates to other persons.

The acquisition of any interest in land other than a right referred to in Sub-section (1) of the last foregoing section shall -

(a) if it is undisputed, be recorded by the patwari in the such manner as the Financial Commissioner may by rule in this behalf prescribe; and

(b) if it is disputed, be entered by the patwari in the register of mutations and dealt with in the manner prescribed in subsections (5) and (6) of the last

foregoing section.

37. Determination of disputes.-(1) If during the making, revision or preparation of any record or in the course of any enquiry under this Chapter, a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion or on the application of any party interested, but subject to the provisions of net following Section and after such enquiry, as he thinks fir determine the entry to be made as to that matter.

(2) If in any such dispute Revenue Officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain through the Gram Panchayat constituted under the Himachal Pradesh Panchayati Raj Act, 1994 or any other agency, so prescribed by the Financial Commissioner or by summary enquiry who is the person best entitled to the property and shall by order direct that, the person be put in possession thereof, and that, an entry in accordance with that order, be also made in the record or register.

(3) A direction of a Revenue Officer under Sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.]

38. Restrictions on variations of entries in record.- Entries in record of rights or in 1[periodical] records except entries made in records by patwaries under Clause (a) of Section 36 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by -

- (a) making entries in accordance with facts proved or admitted to have occurred;
- (b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties; and (c) making new maps where it is necessary to make them.

8. It cannot be disputed that prior to institution of the suit on 8.7.1988 Plaintiff's application filed before the Settlement Collector stood rejected vide order dated 30.3.1988 (Ext. D-5). Now perusal of this order evidently makes it clear that entries in the revenue record, showing common path were reflected after verification of the spot by the Naib Tehsildar in the presence of the Plaintiff and the residents of the area. Undisputedly this order has attained finality and the same is also not subject matter of challenge in the present suit, which is evident from the pleadings and the prayer made in the plaint, which reads as under:

It is therefore prayed that suit for declaration that Plaintiff alongwith Defendant No. 3 is owner in possession of land comprised in khata 43 min khatauni 67 khasra No. 455 area 0-08-86 hect. Situated in Baryal Behard Mauza Kaloha Tehsil Dehra Distt. Kangra H.P. Jamabandi 1986-87 alongwith declaration that entry showing shere-aam in possessory column is wrong against the facts and together with injunction restraining the Defendants 1 and 2 from claiming any path or its uses in any manner be decreed against Defendant 1 and 2 with costs.

In the alternative suit for mandatory injunction for restoring the land in its original position if Defendants succeed in causing out a path in the land in suit be decreed.

9. In this view of the matter, no substantial question of law as framed would arise for consideration in the present appeal.

10. Mr. Ajay Sharma has invited my attention to the decision rendered by this Court in *Rajinder Kumar and Anr. v. Bhag Singh*, 1996 (1) SLJ 215 to contend that entry of possession in the settlement record, without any status would not carry any legal weight. Reliance on the said decision, in my considered view is totally misconceived. The observation was made by the Court in the context of a plea taken by a party to prove his adverse possession, which is not the case in hand. The Court did not find the evidence led by the Defendant to prove his plea of adverse possession to be cogent, convincing and reliable and thus reliance on an entry made during the course of settlement proceedings in his favour was considered to be unacceptable.

11. On the other hand, my attention has been invited by Mr. Bipin C. Negi, who was permitted to argue the matter, on behalf of some of the residents of the village, though not parties, but having interest in the lis, to the decision rendered by this Court in *Ram Parkash v. Geeta Devi and Ors.* 1999 (1) SLJ 16, wherein it has been held as under:

21. It may not be out of place to mention here that in case the entry in the settlement operation was changed without any inquiry or without any order of the competent authority or against law and rules in this behalf, the later entry having been substituted in this manner shall be deemed to have been rebutted. It was really strange to note as to how the Courts below came to the conclusion that during settlement operation the entries were changed without any inquiry or order by the competent authority. There is practically no evidence to that effect except the bald statement of the Plaintiff himself. According to Plaintiff, entries were changed during settlement operation. The record of the settlement has not been called for during the trial of the suit so as to come to the conclusion whether the entry was changed in accordance with law and rules in this behalf or otherwise. In the absence of any record before the Courts below, it could not be appreciated that the entries were changed during settlement operation, without any inquiry or order by any competent authority. These observations appear to have been made without there being any substance on record to support the same. There is no dispute to the proposition that the settlement records were generally prepared with much greater care and accuracies and the Courts will not easily discard the record so prepared during the recent settlement. So far as the present case is concerned, during the recent settlement as has been pointed out above, the owners have been recorded in occupation of the suit land and in the latest record of rights, this entry continued and uptil today, it is continuing in favour of the vendee which was previously in favour of the vendors. The father of the Plaintiff was alleged to have been recorded in the jamabandi for the year

1965-66 in occupation of the land as tenant and now it is being argued that his name has been wrongly deleted during settlement and the entry thereafter made in the record of rights was wrong. It is correct that the Plaintiff could come to the Court when his rights were alleged to have been assailed by the opposite party, no matter the entries in the revenue record were against him. In the present case, it does not at all appeal to reasoning that the Plaintiff was not in the knowledge of the entry made during settlement and thereafter till the suit was filed. Anyway, the fact remains that, at first instance, it cannot be said, on any account whatsoever, that the entry during the settlement was substituted without any authority as there is no evidence brought on record in that particular behalf in order to infer that aspect of the matter. Otherwise, in accordance with law, it would be legally presumed that the entries were properly and lawfully substituted for the previous entry and to the latest entry the legal presumption of truth is attached which is definitely in favour of the vendee.

12. Now before the trial Court, no evidence has been led by the Plaintiff to show as to how and in what manner provisions of Section 38 of the H.P. Land Revenue Act, 1954 stood violated.

13. Entry in the record of rights was made by competent officer and in the manner authorized by the Financial Commissioner. Record was prepared after visiting the spot as is evident from the order (Ext. D-5). From the testimony of witnesses it stands proved that common path was in existence, used by the residents of 5-7 villages since time immemorial. At this stage, it would not lie in the mouth of the Plaintiff to urge that entries were made behind his back or that the authority had no jurisdiction to effect the changes in the column of possession. For the very same reason, it would not be open for the Plaintiff to urge that the order (Ext. D-5) was passed by an Officer not having jurisdiction to do so. Record was corrected after verifying the factual position on the spot.

14. There is yet another aspect, which needs to be dealt with. Plaintiff filed an application (CMP No. 1056 of 2005) placing on record compromise entered into between him and Defendant No. 2 Ishwar Dass. In the said application on 18.5.2006 this Court directed the Plaintiff to get notices served upon all the residents of the village(s) as per entry in the revenue record. In spite of time and opportunities granted by this Court, residents could not be served. As such, on 21.11.2007 Plaintiff got deleted names of certain residents of the villages. The said application was allowed on 8.1.2008 and the suit was decreed in terms of the compromise. However subsequently some of the residents approached this Court seeking recalling of the order dated 8.1.2008 and setting aside the compromise decree. The said application (CMP No. 602 of 2009) was allowed on 22.12.2010. This order has attained finality. In spite of the same, it is now urged that in any event compromise application (CMP No. 1056/2005) needs to be allowed. In my considered view, contention needs to be rejected for the reason that none has appeared for the original contesting Defendants at this stage. That apart, suit being representative in nature and character, it is not in the interest of

justice that one of the residents be allowed to compromise the matter to the detriment of the co-villagers. It is neither in the interest of justice nor the parties to grant leave in favour of the Plaintiff. As such, application is also dismissed.

15. For the aforesaid reasons, the present appeal being devoid of any merit is dismissed. However, there shall be no order as to costs.