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**(2010) 07 SHI CK 0119**  
**In the High Court Of Himachal Pradesh**

Saran Dass and Others

APPELLANT

Vs

Hem Raj and Others

RESPONDENT

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**Date of Decision :** 12-07-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Constitution of India, 1950 — Article 227

**Citation :** (2010) 07 SHI CK 0119

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

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Surjit Singh, J.—Petitioners, by means of the present petition, under Article 227 of the Constitution of India, have challenged the judgment dated 22nd April, 2008, of learned District Judge, whereby petitioners' appeal against the order dated 17th December, 2008 of learned trial Court has been dismissed and the order of the trial Court, dismissing the application of the petitioners, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, affirmed.

2. Petitioners have filed a suit for declaration that they are joint owners in possession of land measuring 11387 bighas, situate in the District of Chamba, which, according to them, was granted by means of a Patta, in the year 1854, by the then Ruler of Erstwhile Chamba State in favour of their predecessor-in-interest, named Dalpat. By way of further relief, they have prayed for issuance of permanent prohibitory injunction, restraining the respondents-defendants from felling any trees from the said land.

3. Case of the petitioners may be summed up thus. One Dalpat was granted 11387 bighas of land by the then Ruler of Chamba State, in the year 1854. The grant was endorsed and acknowledged by the successors of the said Ruler. Entries in the revenue record continued in favour of Dalpat and after his death his successors. Dalpat had two successors, named Nantu and Chhaja. Petitioners claim themselves to be the successors of Nantu, while respondents-defendants

No. 1 to 9 are stated to be successors of Chhaja. In the year 1950, settlement took place in the District of Chamba, which was at that time part of Union Territory of Himachal Pradesh. During the course of that settlement, entire land, which was allegedly given in grant to Dalpat, was entered in the ownership and possession of Union of India.

4. Entries and the action of Settlement Authorities were challenged by the predecessors of respondents-defendants No. 10 to 31, namely Godham and two others, by filing a suit in the Civil Court, in the year 1963. That suit was decreed, to the extent of 8956 bighas, out of the total land. Matter was carried right up to the Supreme Court, but the decree of the trial Court remained unchanged. On the basis of that decree, entries were made in the names of predecessors of respondents-defendants No. 10 to 31.

5. Thereafter, two suits, one after the other, were filed by two of the defendants No. 1 to 9, claiming that they, being the successors of Dalpat, were entitled to the benefit of the decree passed in favour of the predecessors of respondents-defendants No. 10 to 31. The first suit was dismissed. The second suit, filed by another respondent from amongst respondents No. 1 to 9, was referred to Lok Adalat, when it was pending in appeal and on the intervention of the Lok Adalat, out of total area of 11387 bighas, 3306 bighas of area was given to defendants No. 1 to 9 and the rest of the land, i.e. more than 8000 bighas, remained with defendants No. 10 to 31.

6. In the year 2007, the present petitioners also woke up and filed the suit, as aforesaid. They also filed an application, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking temporary injunction, restraining the respondents-defendants from felling any trees from the suit land, pending disposal of the suit. The two Courts below have dismissed the application, with the reasons that decree passed in favour of predecessors of defendants No. 10 to 31, in the year 1965, has attained finality, the petitioners are out of possession and they do not appear to be the successors of Dalpat. The present petition is directed against these orders.

7. I have heard the learned Counsel for the parties and gone through the record.

8. View taken by the two Courts below that decree passed in favour of the predecessors of defendants No. 10 to 31 has attained finality is correct, only to the extent that it has attained finality, but not the way the two Courts below have assumed that it has become final, even qua the petitioners. The reason is that the petitioners were admittedly not a party to the litigation, in which that decree was passed. However, it is clear from the facts, as narrated hereinabove, that even though the settlement had taken place in the year 1950 and the names of the successors of Dalpat did not find mention in the Misl Hakiat and the other settlement record, the petitioners took no steps to get the entries corrected. It was the predecessors of defendants No. 10 to 31 who filed a suit in the year 1963 and succeeded in retrieving a substantial part of the land, which

was granted to Dalpat in the year 1854. The petitioners did not take any steps to claim their alleged right in the suit property even thereafter, though defendants No. 1 to 9, who claimed to be related to Dalpat through Chhaja, filed a suit and succeeded in getting 3306 bighas of land, in that suit, out of the total land covered by the Patta, granted by the then Ruler of Erstwhile Chamba State.

9. Also, there is nothing on record, indicating if the petitioners are in possession of any portion of the suit land. Their claim that they are the successors of Dalpat is also yet to be substantiated. There is no material on record, not even copy of the pedigree table, supposed to be prepared and maintained by the revenue Department, showing that they are the descendents of Dalpat. Their claim that they are the legal heirs of Dalpat has been specifically controverted by the defendants-respondents.

10. In view of the abovestated position, I see no merit in the present petition. The same is, therefore, dismissed. However, it is directed that in case defendants-respondents are permitted, by the Forest Department, to fell any trees from the land, in question, and pursuant to such permission felling is done by them, they will keep proper accounts of the income derived from felling of such trees and also the number of trees so felled and they will be submitting such accounts, monthly, during the progress of felling and sale of the felled trees, to the trial Court. Observations made hereinabove shall have no bearing on the merits of the main suit.

Petition stands disposed of. Pending application, if any, also stands disposed of, as having become infructuous. Record of the trial Court be returned, immediately.