

(2013) 05 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 515 of 2012-A

Sher Singh and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 — Section 15, 4
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2, 3

Citation : (2013) 05 SHI CK 0022

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Dinesh Kumar, for the Appellant; M.L. Chauhan, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The appellants are plaintiffs, they have lost in both the Courts below, they have assailed judgment, decree dated 26.3.2012 passed by learned Addl. District Judge, Solan in Civil Appeal No. 12-S/13 of 2011 affirming judgment, decree dated 29.12.2010 passed by learned Civil Judge (Senior Division), Kasauli, District Solan, H.P. in Civil Suit No. 284/1 of 2002. The appellants had filed a suit for declaration and injunction against the respondents that they have become owners in possession of the land at Sihardi Chamara by efflux of time. They have assailed the order passed by the Collector on 11.9.2000 in case State vs. Sheru and others and also the order dated 19.5.2001 passed by the Commissioner (Revenue) in appeal titled Sheru vs. State of H.P. They have sought consequential relief of permanent prohibitory injunction restraining the respondents from interfering in the ownership and possession of the appellants over the suit land.

2. The pleaded case of the appellants is that they are residents of village Sihardi where they are residing for the last more than 60 years. The appellants belong to

Bangala caste which is a backward section of the society besides being scheduled caste. It has also been alleged that the appellants being scheduled tribes and traditionally dwell in forest area. The appellants since time immemorial had been roaming in the forests, residing there and were dependent on forest and forest land for their livelihood.

3. The respondents No. 2 issued notice to the appellants of unauthorized possession over the suit land. The Collector-cum-D.F.O., Solan initiated the proceeding, which was contested by the appellants. They pleaded their adverse possession over the suit land. The ownership of the appellants was recognized by the State of Himachal Pradesh as it had been providing various subsidies and grants to the appellants for the purpose of construction of houses etc. The respondents at no point of time raised any objection to the possession of the appellants.

4. In the year 1974 Baldev Singh, D.F.O. visited the spot and asked the appellants to remove their constructions from the suit land. The appellants asserted that they had been allowed to occupy the land by the Rulers and had been given ownership of the same. The appellants asserted their hostile possession and claimed title by way of adverse possession over the suit land.

5. The respondent No. 2 has no jurisdiction to issue notice u/s 4 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (for short "Act"). In the proceedings under the Act, the appellants raised question of title which could not be decided in summary manner by the Collector. The order dated 11.9.2000 passed by the Collector is wrong and illegal. Similarly, the order dated 19.5.2001 of the Commissioner (Revenue) is also wrong and illegal.

6. It has been alleged that Gram Sabha, Dharampur under whose jurisdiction the suit land falls has recognized rights of the plaintiffs/appellants over the suit land by providing facilities of roads, street lights etc. The rights of the plaintiffs have been recognized under the Scheduled Tribes and other Traditional Forest Dweller's (Recognition of Forest Rights) Act, 2006 (for short "2006 Act") which provides protection to the appellants from their eviction.

7. The suit was contested by the respondents by filing written statement. They have taken preliminary objections of jurisdiction, maintainability, valuation. On merits, it has been denied that the appellants are residents of village Sihardi Chamara for the last more than 60 years. They have defended the orders passed by the Collector as well as Commissioner (Revenue). The subsidies were given by the Government to the appellants for their welfare and not for encroaching the forest land. The suit land was never allotted to the appellants, they are encroachers. It has been denied that the appellants have become owners of the suit land by way of adverse possession. It has been denied that the appellants are dependent upon the forest for their livelihood. The protection of 2006 Act is not available to the appellants. The appellants are not doing agricultural activities on the forest land nor they are selling wood or other produce of the forest in the

market for their livelihood. They are also not earning their livelihood by hunting. The remaining claim of the appellants was denied.

8. The appellants filed replication. On the pleadings of the parties, the following issues were framed:

1. Whether the order passed by the defendant No. 2 in case State of H.P. Vs. Sheru and others on 11.9.2000 and the order dated 19.5.2001 passed by Commissioner Revenue in appeal No. 71/2000 titled as Sheru Vs. State of H.P. are wrong, illegal, null and void, as alleged? OPP

2. Whether the plaintiffs have perfected their title qua the suit land by way of adverse possession, as alleged? OPP

2(a) Whether the plaintiffs are protected from their eviction in view of the provisions of the Scheduled Tribes and other Traditional Forest Dweller's (Recognition of Forest Rights) Act, 2006, as alleged? OPP

3. Whether the jurisdiction of this Court to try and decide the matter is barred under H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971, as alleged? OPD

4. Whether the suit is not maintainable in the present form in the eyes of law? OPD

5. Whether the plaint does not disclose any cause of action, as alleged? OPD

6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD

7. Relief.

The issues No. 1, 2, 2(a), 4 and 6 were answered in negative, issue No. 3 in affirmative and issue No. 5 was not pressed. The suit of the appellant was dismissed by the learned trial Court on 29.12.2010. The first appeal filed by the appellant was dismissed on 26.3.2012, hence second appeal.

9. I have heard Mr. Dinesh Kumar, learned counsel for the appellants and Mr. M.L. Chauhan, Additional Advocate General for the respondents and have also gone through the records. On behalf of the appellants, it has been submitted that the learned Courts below have erred in holding that the jurisdiction of the Civil Court to try the suit is barred. The Courts below have wrongly held against the appellants regarding their plea of adverse possession. The appellants are otherwise protected under the 2006 Act. The evidence has been misconstrued. Chamaru Ram Vs. The Additional Commissioner (Appeals) and Others, and Ravinder Singh and Others Vs. State of Himachal Pradesh and Others, have been relied by learned counsel for the appellants. The learned Additional Advocate General has supported the impugned judgment, decree and has submitted that the two Courts below after proper appreciation of the evidence have categorically recorded findings of facts against the appellants. No substantial question of law

is involved in the appeal. In the second appeal, re-appreciation of evidence is not permissible.

10. The suit was initially dismissed on 11.6.2009. In appeal, learned District Judge allowed the amendment application of the appellants. The appeal was accepted on 20.7.2010 and the suit was remanded with a direction to the trial Court to give opportunity to the respondents to file written statement to the amended plaint. The parties were given opportunity to lead evidence on new issues, if any. The trial Court thereafter dismissed the suit on 29.12.2010 and learned Additional District Judge on 29.12.2010 affirmed the judgment, decree dated 26.3.2010 of the learned trial Court.

11. The appellants have assailed the orders dated 11.9.2000 and 19.5.2001. They have sought declaration that they are owners of the land and structures mentioned in the order dated 11.9.2000. They have acquired their title on the basis of adverse possession of over 30 years. In alternative, they have right to hold and possess the land under 2006 Act. They have prayed injunction against the respondents from interference over the suit land. The appellants have pleaded that respondent No. 2 had issued notices to appellants identifying their possession over different parts of khasra No. 1 from 2 to 6 biswas on forest land situate in Sihardi.

12. The appellants have pleaded that they have been residing in a village Sihardi Chamara for the last more than 60-70 years and they are scheduled caste. They are dependent upon forest land for bonafide livelihood. They are scheduled tribes and traditionally dwell in forest area. The respondent No. 2 has no jurisdiction under the Act to proceed against the appellants, who are otherwise protected under the 2006 Act.

13. The appellants have not placed on record the revenue record indicating their possession over the suit land. They have produced applications and electricity connection orders Ex. PW-6/B to Ex. PW-6/F. Ex. PW-6/F is the application dated 17.7.1964 and Ex. PW-6/E is the connection order in favour of Bhondoo Ram. Ex. PW-6/D is the application dated 27.8.1978 and Ex. PW-6/C is the connection order dated 27.9.1978 in favour of Sukh Ram. Ex. PW-6/B is the application of Sadh Ram presented on 16.6.1992.

14. PW-1 Sadh Ram has tendered in evidence his affidavit Ex. PW-1/A, the copy of order dated 11.9.2000 Ex. PW-1/B and copy of grounds of appeal Ex. PW-1/C and copy of order of Commissioner mark "A". In affidavit Ex. PW-1/A he has stated that in or around the year 1942 Shiradi Chamara area was in Patiala State. Maharaja of Patiala was pleased with the services rendered by their community and granted/gifted the suit land to their ancestors and since then they are residing over the suit land. He further deposed that his ancestors discontinued moving from place to place, developed the land and settled there by raising permanent structures. The houses were constructed in the year 1944-45. The ancestors became owners of the suit land on the basis of the gift. The State

of H.P. also treated them as owners and granted financial help for improvement of their houses. The defendants have no jurisdiction to adjudicate the complicated questions of gift. He has stated that in alternative, the plaintiffs have become owners of the suit land on the basis of hostile possession. Baldev Singh, D.F.O. visited the spot in the year 1975. He was told that the suit land was allotted to the plaintiffs by Maharaja Patiala in the year 1942. Baldev Singh told the plaintiffs that they were in illegal possession. They asserted their ownership on the suit land. The plaintiffs belong to Scheduled Caste. In cross-examination, he has stated that his house was constructed 30-35 years ago, his statement was recorded on 18.3.2006. They never got their possession recorded with the Patwari. He has no proof of allotment of land by way of gift. He denied that houses were constructed by them recently.

15. PW-2 Rajesh Kumar tendered in evidence his affidavit Ex. PW-2/A which is more or less on the same lines as affidavit Ex. PW-1/A. In cross-examination, he has stated that he is working in Hot-Millions. He constructed his house in the year 1969. PW-3 Ashok Gupta has tendered in evidence his affidavit Ex. PW-3/A. He has stated that he remained Vice-Pradhan of Gram Panchayat, Dharampur. The village Sihardi Chamara is part of Gram Panchayat, Dharampur. He has stated that in the year 1942 fire broke out in Sihardi Chamara. The ancestors of the plaintiffs helped the officials of Maharaja Patiala in extinguishing the fire. Maharaja Patiala gifted the suit land to the ancestors of the plaintiffs. All houses of the plaintiffs were constructed before independence in the year 1944-45. Maharaja Patiala was the owner of the suit land, thereafter the land vested in the State of Himachal Pradesh but possession remained with predecessors-in-interest of the plaintiffs. Baldev Singh, D.F.O. visited the area in the year 1974. He asked the plaintiffs or their ancestors to vacate the forest land. He was informed that the suit land had been allotted to the plaintiffs or their predecessors by Maharaja Patiala. In cross-examination, he has stated that he heard of fire but did not see himself. He has given his date of birth 16.8.1953. He is the President of Gram Panchayat, Dharampur. He never enquired that colony of the plaintiffs is illegal and, therefore, panchayat funds should not be spent in such colony.

16. PW-4 Gurdev Singh in examination in chief has tendered his affidavit Ex. PW-4/A which is more or less on the same lines as Ex. PW-1/A. In cross-examination, he has stated that he is living in Dharampur since 1953. Maharaja Patiala had given the land in dispute. The colony is in forest land. He remained member Gram Panchayat, Dharampur twice. The forest land cannot be allotted by the Government. The Government does not provide any aid to unauthorized colony. PW-5 Nanak Singh in examination in chief has tendered his affidavit Ex. PW-5/A in which he has deposed like the affidavits of other witnesses. In cross-examination, he has stated that he had heard that in Chamara forest there was an incident of fire. Maharaja Patiala orally rehabilitated the plaintiffs. He remained member and Vice President of the Panchayat from 1975 to 2005. He never enquired that colony is authorized or unauthorized. PW-6 Jai Krishan, Meter Reader, Electrical Sub Division, Dharampur has proved applications and

connection orders Ex. PW-6/A to Ex. PW-6/F.

17. PW-7 Baldev Singh has tendered in evidence his affidavit Ex. PW-7/A in which he has stated that in 1974 he was posted as D.F.O., Solan. In 1975 he found various houses on the forest land. He was told that the land was given to the Bangala community people by Maharaja Patiala in gift. It was found that those persons were in possession of the land since 1942. In cross-examination, he has stated that Bangala community people are engaged in small trades. In 1975 he found about 35 houses on the land, some were katcha and some were pucca. PW-8 Beer Singh, office Superintendent, Gram Panchayat, Dharampur has proved panchayat resolutions Ex. PW-8/A to Ex. PW-8/H and Ex. PW-8/J to Ex. PW-8/L.

18. After remand of the case, PW-1 Sadh Ram tendered his affidavit Ex. PW-1/A-1 in examination in chief and stated that their main source of livelihood has been to collect forest produce, catch snakes etc. in the jungle. They are Bangala by caste. They had been collecting dry wood from jungle, selling it to meet their basic needs. In cross-examination, he has stated that they are not hunting, they collect waste material, many of them are employed in different jobs. PW-2 Rajesh Kumar has tendered in evidence his affidavit Ex. PW-2/A-1. He has deposed like PW-1. In fact on material particulars Ex. PW-2/A-1 and Ex. PW-1/A-1 are identical. In cross-examination, PW-2 has stated that Bangala community people roam here and there. He stated that he is employed in a hotel. PW-3 Ashok Kumar Gupta, President, Gram Panchayat, Dharampur has tendered in evidence his affidavit Ex. PW-3/A-1 which on material particulars is identical to Ex. PW-1/A-1. In cross-examination, he has denied that the suit land is forest land. The forest land cannot be allotted to anyone. He has stated that Bangala community people do not stay at one place, they roam about. PW-4 Gurdev Singh has tendered in evidence his affidavit Ex. PW-4/A-1 which on material particulars is identical to the examination in chief of PW-1 to PW-3. In cross-examination, he has stated that in Sihardi Chamara forest Bangala community people are residing.

19. DW-1 Hitender Sharma, R.O. Subathu Range has tendered in evidence his affidavit Ex. DW-1/A and has stated that the plaintiffs had been occupying forest land illegally, notice was issued under the Act. The suit land was never allotted to the plaintiffs by Maharaja Patiala. The suit land came in possession of Forest Department in 1937 settlement and is continuing. The possession of the plaintiffs was detected during 1990-91 forest settlement. Baldev Singh, Retd. D.F.O. did not visit the suit land in 1975. The forest land cannot be allotted. In cross-examination, he admitted that Ex. P-1, Ex. P-2 and Ex. P-3 are of the suit land. He denied that Ex. PW-8/A to Ex. PW-8/L are the details of works done on the spot.

20. DW-2 Kaka Ram, Forest Kanungo has tendered in evidence his affidavit Ex. DW-2/A, in which he has stated that ownership of the State and possession of Forest Department has been correctly recorded in the revenue record. He was

posted as Patwari in Solan Forest Division during 1977-99. In 1991-92 encroachments of plaintiffs were detected during forest settlement. In cross-examination, he has stated that photographs Ex. P-1 to Ex. P-19 are of the spot. He has no knowledge of the spot situation before forest settlement. The respondents did not lead evidence after remand.

21. The case of the appellants in brief is that Maharaja Patiala gifted the suit land to the predecessors of the appellants around the year 1942, they constructed their houses immediately thereafter and since then they are residing in the houses constructed over the suit land. In alternative, the appellants have projected their case of adverse possession. They have also sought protection under the 2006 Act. The construction of houses over the suit land some katcha and some pucca has been established but it is the case of the respondents that encroachments of the appellants over the suit land were detected in the year 1990-92 during forest settlement, thereafter, steps were taken for evicting the appellants from the suit land. The Collector found the appellants and others encroachers over the suit land, they were ordered to be ejected vide order dated 11.9.2000 Ex. PW-1/B which was upheld by the Commissioner on 19.5.2001.

22. The appellants have miserably failed to prove that the suit land was allotted to them by Maharaja Patiala around the year 1942. The appellants have not produced any written order or oral order of Maharaja given effect in the revenue record to show that the suit land in fact was allotted to the appellants by Maharaja Patiala in the year 1942. The appellants have alleged that even respondent No. 1 while acknowledging the ownership of appellants in the past had provided several common facilities to the appellants. It has been proved on record that the suit land is part of forest land. The witnesses of the appellants have stated that the forest land cannot be allotted and for illegal colonies, no facilities can be provided by the Panchayat. But it appears that Panchayat representatives in order to woo the voters of the unauthorized colony of the appellants, provided them some common facilities, but that will not legalize the unauthorized colony of appellants and others over forest land. The simple possession of the appellants over the suit land will not transform into legal title.

23. The appellants have taken contradictory plea of ownership by way of gift over the suit land and title over the suit property by way of adverse possession. The possession howsoever long is not enough to record a finding of adverse possession unless it starts with hostile animus and continue as such over statutory period so as to claim adverse possession. The State was also not aware till forest settlement in 1990-92 that appellants are in unauthorized possession over the suit land. The State during forest settlement only in 1990-92 came to know unauthorized possession of appellants over the suit land.

24. The statement of PW-7 Baldev Singh that he as D.F.O. forest in the year 1975 came to know the unauthorized possession of the appellants over the suit land is not believable. There is no explanation why PW-7 after having come to know unauthorized possession of appellants over the suit land did not take any

action for evicting the appellants from the suit land or to bring to the notice of the higher authorities the unauthorized possession of the appellants over the suit land. Thus, taken from any angle, the appellants have failed to prove their adverse possession over the suit land.

25. The learned counsel for the appellants has submitted that the two Courts below have erred in holding that the Civil Court has no jurisdiction to go into the question of title of appellants in view of the findings recorded by the Collector in the order dated 11.9.2000 and by the Commissioner in the order dated 19.5.2001 under the Act. In view of *Chamaru Ram* (supra), there is substance in this submission of learned counsel for the appellants. In *Chamaru Ram*, it has been held that bar imposed by Section 15 of the Act cannot deprive the plaintiffs of their right to claim title by filing civil suit. However, the appellants have independently failed to prove their title over the suit land. It has also been submitted on behalf of the appellants that the Collector and the Commissioner erred in proceeding against the appellants collectively, the submission is that individual appellant is in possession of certain portion of the land in dispute, therefore, all the appellants could not have been proceeded by the Collector and the Commissioner in one proceeding. In support of this submission, help has been taken from *Ravinder Singh* (supra). The appellants have not shown any prejudice for proceeding against them jointly in one proceeding. Therefore, the appellants cannot take advantage of *Ravinder Singh* (supra).

26. It has been lastly contended that the appellants are protected under the 2006 Act. The appellants have taken different stands in the plaint. They have pleaded they belong to Scheduled Caste. They have also pleaded that they are Scheduled Tribe. Their case is also that they belong to Bangala community. The Clause (c) of Section 2 of 2006 Act defines "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities. The Clause(o) of Section 2 defines "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. The explanation to Clause (o) provides "generation" means a period comprising of twenty-five years. The Section 3 of 2006 Act identifies forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.

27. The appellants in the plaint have pleaded that they belong to Bangala caste and are Scheduled Caste. They have also pleaded that they are Scheduled Tribe and traditionally dwell in the forest area. They are not sure to which community or caste they belong. The appellants have not proved that their community primarily resided in forests and depend on forests or forest land for bona fide livelihood needs. On the contrary, it has come in evidence that some of the appellants are employed at different places. The suit was filed in the year 2002.

The appellants have pleaded that they are residing in village Sihardi for the last more than 60 years. Therefore, as per appellants they are occupying the suit land since or around 1942. The 2006 Act recognizes other traditional forest dwellers occupying such land for the last three generations, prior to 13.12.2005 with each generation of 25 years. In other words, the 2006 Act recognizes other traditional forest dwellers if they are occupying the forest land since 13.12.1930. The appellants are thus not other traditional forest dwellers under the Act even as per their pleaded case.

28. The appellants simply on the basis of their possession over the suit land which is part of forest land cannot claim protection under the 2006 Act. It is common knowledge that people individually or in group encroach upon the Government land, they manage their stay over encroached land by pulling strings here and there together with intentional or unintentional inaction of authorities for evicting them from the encroached land but that does not mean that such encroachers with the passage of time only acquire title over the Government land. The appellants have miserably failed to prove their title over the suit land. The two Courts below have concurrently held against the appellants. There is no substantial question of involved in the appeal. The appeal is devoid of any merit. In view of above, the appeal fails and is accordingly dismissed.