

(2016) 09 SHI CK 0097
In the High Court Of Himachal Pradesh
Case No : RSA No. 258 of 2006

Shiv Ram

APPELLANT

Vs

Partap Singh

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 38

Citation : (2016) AIRCC 3205

Hon'ble Judges : Mr. Chander Bhusan Barowalia, J.

Bench : Single Bench

Advocate : Shri K.D. Sood, Sr. Advocate, with Mr. Rajnish K. Lall, Advocate, vice Mr. Sanjeev Sood, Advocate, for the Respondent Nos. 3 and 4; Mr. J.L. Kashyap, Advocate, for the Appellants LRs No. 1(a) to 1(c)

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J. - The present regular second appeal is maintained by the appellant/defendant, Shri Shiv Ram, who has died during the pendency of the appeal herein and the appeal is being pursued by his legal representatives (hereinafter referred to as "the defendant") laying challenge to the judgment and decree passed by the learned Additional District Judge, Fast Track Court, Shimla, H.P., in Civil Appeal No. 13-S/13 of 2004/88, decided on 21.03.2006, whereby the appeal preferred by the respondents/plaintiffs (hereinafter referred to as "the plaintiffs") was allowed and the judgment and decree of the learned Trial Court passed in Case No. 104/1 of 1985, decided on 24.12.1987, was set aside.

2. The brief facts giving rise to the present regular second appeal are that the plaintiffs sought a decree for permanent prohibitory injunction against the defendant, restraining the defendant from interfering in any manner with the possession of the plaintiffs over the suit properties, details whereof find mention in paras 1 and 2 of the plaint. Plaintiffs had also sought decree for mandatory

injunction with a direction to the defendant to remove the construction over a part of the suit land. Plaintiffs have also sought a direction to restore their possession over plots of land, as per jamabandi for the year 1981-82, measuring 13 bighas, 14 biswas comprised in khasras No. 50, 51, 53, 56, 68, 302/51/1 (2 bighas), 302/52/3 (0-17 biswas) and 303/52/1 (6.17 bighas) entered at Khewat No. 1 min, Khatauni No. 1 min, situated at mauza Kanori Pargana Dhamer, Tehsil and District Shimla. Simultaneously, the plaintiffs have also sought a decree for rendition of accounts, directing the defendants to render true and accurate accounts and on accounts being taken to grant a decree for recovery of amount along with a decree for recovery of Rs. 500/- as damages till the date of filing of the suit and future damages @ Rs. 1000/- per annum from the date of filing of the suit till the date of delivery of possession. In the event of defendants succeed in dispossessing the plaintiffs from any part of the suit land, then decree for possession was also prayed for.

3. As per the plaintiffs, plaintiff No. 1 is the owner of the land, that is, 40 plots, as per jamabandi for the year 1981-82, measuring 53 bighas 11 biswas, comprised in Khasras No. 2, 4, 12, 301/31, 299/32, 300/32, 41 min, 50, 51, 302/52 min, 303/52/1, 53, 54, 55, 56, 368/57, 370/58, 379/304, 381/305/61, 382/305/61, 62, 306/61, 67, 69 min, 68, 71, 72, 372/358/76, 359/76, 361/76, 80, 88/1, 203, 386/244, 387/244, 208/251, 392/263 and 393/263, entered at Khewat No. 1, Khatauni No. 1 of mauza Kanori Pargana Dhamer, Tehsil and District Shimla. As per the plaintiffs, plaintiff No. 2 is stated to be owner of the land, that is 15 plots, as per jamabandi for the year 1979-80, measuring 12 bighas, 16 biaswas, comprised in Khasras No. 1349/186, 1355/188, 1359/190, 1360/190, 1362/192, 1363/1092, 159, 159/1, 180, 1336/181, 1337/181, 1339/182, 1342/183, 1346/1, 85 and 1347/185, entered at Khewat No. 74, Khatauni No. 151, situated at Mauza Majhar, Pargana Dhamer, Tehsil and District, Shimla. It is also averred in the plaint that plaintiff No. 1, being ex-Ruler of erstwhile princely State of Dhami, has to remain out of the village usually for substantial period and he was getting his property managed through various persons. The defendant, who was the father of the present appellants, was appointed as a Manager to look after and manage the properties of plaintiffs No. 1 and 2 and he was authorised to keep all accounts of the income and expenditure and defendant was liable to render accounts to the plaintiff after harvest of each crop, viz., twice a year. It also included looking after the building of the plaintiffs, situated over the above mentioned land and management of Parao as well as moveable and immoveable property of the plaintiffs. The defendant acting upon the instructions of the plaintiffs used to render the accounts to the plaintiffs, through plaintiff No. 1, after each harvest and for the work done by the defendant for and on behalf of the plaintiff. It is also averred that the defendant used to pay 10% management charges of the income of properties. The defendant was also required to maintain a register for keeping the account of income and expenditure as well as inventory of the properties of the plaintiffs.

4. It is further averred by the plaintiffs that in the month of March, 1982, the defendant got checked from the Officials of the Forest Department, that the rosin, which belonged to plaintiff No. 1, had been stolen from the godown in Khel-ka Chora and it was reported to the plaintiffs that 30 tins of rosin are missing from the godown. The matter was reported to the police and on investigation, 18 tins of rosin were found at Khel Ka Chora and 40 tins of rosin from godown at Kanori were missing. After conclusion of inquiry, the officials of Forest Department had to take rosin to Resin and Turpentine Factory at Bilaspur. The defendant did not open the lock when the officials of the Forest Department visited the spot. Plaintiff No. 1 had no option but to break open the locks. In the months of February/March, 1983, plaintiff No. 1 asked the defendant to bring the register containing the inventory of the property and amount of income and expenditure as well as to hand over the charge to plaintiff No. 1, but the defendant failed to do the needful. It is further averred that defendant had been deputed by plaintiff No. 1 to perform regular puja in the temple of "Narsinghji Maharaj" situated at Kanori, Tehsil and District Shimla, which is private property of plaintiff No. 1. As per the plaintiffs, the defendant was having a residential house at Kanori Bazar, but with a view to properly look after and maintain the temple and perform the puja, defendant No. 1 was allowed to use a house belonging to plaintiff No. 1 in lieu of the services, which were being rendered by defendant in the temple. Defendant performed the puja for about ten years and the house, which was meant for the Pujari of the temple, was damaged by DGBR personnel. Subsequently, plaintiff No. 1 constructed two one room houses for which construction was carried out by the defendant and the funds were provided by plaintiff No. 1. One house was meant for residential purpose of defendant and other one for cooking and preparation of bhog for deity. Construction was raised on Khasra No. 303/52/1, situated at Mauza Manori, Tehsil and District Shimla. Defendant occupied both the houses and thereafter he asked permission to keep cattles, which was allowed by the plaintiffs. Till such time, the defendant used to remain in the house, but due to the act of the defendant, plaintiff No. 1 terminated the agency of the defendant and asked him to hand over the charge of the property and to stop managing the affairs of his property including the temple. In the months of February/March, plaintiff No. 1 visited the village and found that the defendant without the consent/permission of plaintiff No. 1 has constructed two scuppers upon a portion of the land comprised in Khasra No. 303/52/1. It is further averred in the plaint that defendant gradually extended his possession to the adjoining Khasras No. 51, 303/52 and has also cultivated the land comprised in Khasra No. 53 situated at Mauza Kanori. The defendant, as such has occupied the land measuring one bigha, 14 biswas, comprised in Khasra No. 50, 51 and 53 and 303/52/1 entered at Khewat No. 1 min, Khatauni No. 1 mim (as per jamabandi for the year 1981-82), situated at Mauza Kanori, Pargana Dhamer, Tehsil and District Shimla. As per the plaintiffs, during the pendency of the suit, the defendant has further encroached upon land measuring 12 bighas, comprised in Khasras No. 56 (2-10), 68 (0-9), 302/52/1 (2-0), 302/52/3 (0-17) and parts of Khasra No. 303/52 (6-4), (0-13 biswas is already included in

paragraph 11 of the plaint), total land measuring 12 bighas. Meaning thereby, the defendant is in occupation of 13.14 bighas of land over which he has no right, title and interest. It is further averred that the defendant has no right to raise construction or scuppers over the land and also to personally cultivate the same. With mala fide intentions the defendant intends to raise false claim upon the property of the plaintiffs and he wants to usurp the same. As per the plaintiffs, during the time when the defendant was managing the property, he sold grass out of the property and for which no accounts have been rendered by him. He has also not rendered the accounts of income received by him nor handed over the account books to the plaintiffs. Lastly, the plaintiffs pleaded that as the agency of the defendant was terminated, he is liable to render true and accurate account and he is also bound to pay the amount realized by him after deducting the expenses.

5. The defendant, who was the father of the present appellants, filed written statement and took preliminary objections, that is, over valuation of the suit, jurisdiction and mis joinder of necessary parties. On merits it is admitted that the plaintiffs are owners of the suit land, but the defendant claim himself to be the tenant on payment of half galla batai in respect of land measuring 13 bighas, 2 biswas, Kita 7, Khewat Khatauni No. 1/1, Khasras No. 50 (6 biswas), Khasra No. 51 (3 biswas), Khasra No. 302/52/1 (2 bighas), Khasra No. 302/52/3 (17 biswas), Khasra No. 303/52/1 (6 bighas, 17 biswas), Khasra No. 56 (2 bighas 10 biswas) and Khasra No. 68 (9 biswas) situated in Village Kanauri, Pargana Dhamer, Tehsil and District Shimla for the last more than 12 years. The defendant has contended in the written statement that he has nothing to do with other land described in paras 1 and 2 of the plaint. He has also denied the entries in the jamabandi regarding the land. The defendant has admitted that plaintiff No. 1 is the ex-Ruler of erstwhile princely State of Dhimi and plaintiff No. 2 is his daughter. The defendant, in his written statement, has denied the fact that he was ever employed by the plaintiff to manage the property belonging to the plaintiff. He has contended that he is only in cultivating possession of the land described in para No. 1 of the written statement on payment of half galla batai to the plaintiffs and the plaintiffs are taking undue advantage of the wrong entries in the record and is now trying to threaten the defendant to interfere with his possession over this land. As per the defendant, plaintiff No. 1, being rich person, has lodged a false complaint in the police after the defendant had applied for correction of revenue entries with the concerned revenue officer. However, due to some discrepancy in the description of land, the application was withdrawn and a fresh application has already been filed. It is contended that the lock and key used to remain with plaintiff No. 1 and his wife. After conclusion of inquiry, the factual position was unearthed and no action was taken against the defendant by the police. As per the defendant, temple Narsing Ji Maharaj is not the private property of plaintiff No. 1 and the temple is a place of worship of all. The defendant has admitted that he along with his sons is regularly performing puja in the temple. He has also admitted that he is running a dhaba in Kanori

bazaar and the house is meant for Pujari of the temple, which is damaged. As per the defendant, plaintiff No. 1 sold the slates of this house to one Shri Gorla, son of Shri Ram Dyal and the wooden structure was used by plaintiff No. 1 as firewood. It is further contended that plaintiff did not spend any amount on the construction of two rooms and it is the defendant, who has spent on the construction of these rooms. The house is being used for agriculture purposes. The defendant has denied that during the pendency of the suit, he has encroached upon the land of the plaintiffs. As per the defendant, there is no question of possession of the property, as the defendant is a tenant regarding the land measuring 13 bighas, 2 biswas of land, as mentioned in para 1 of the written statement. Defendant has also denied that he is liable to render any true and correct account as he was never appointed as manager by the plaintiffs to manage their properties.

6. The learned Trial Court on 16.04.1984 framed the following issues for determination and adjudication:

- "1. Whether this Court has no pecuniary jurisdiction, as alleged? OPD.
2. Whether the suit is bad for mis-joinder of parties and causes of action and for multifarious, as alleged? OPD.
3. Whether there is a relationship of landlord and tenant between the parties, as alleged. If so, regarding what property? OPD.
4. If issue No. 3 is proved, whether this Court has jurisdiction to try the suit regarding the property over which the relationship of landlord and tenant is proved between the parties? OPP.
5. Whether the defendant was appointed as a Manager for the plaintiffs' properties and is liable to render accounts? OPP.
6. If issue No. 3 with respect to the properties mentioned in para 17-C of the plaint is decided against the defendant, then whether the plaintiffs are entitled to the possession of this property? OPP.
7. Whether the defendant has raised unauthorized construction on Khasra No. 303/51/1 bearing 13 biswas as alleged in the plaint? OPP.
8. If issue No. 7 is proved in favour of the plaintiff, then whether the plaintiffs are entitled to the relief of mandatory injunction? OPP.
9. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed in para 17-A of the plaint? OPP.
10. Whether the plaintiffs are entitled to damages, if so how much? OPP.
11. Whether the plaintiffs are entitled to any future damages, if so on what rate? OPP.
12. Relief."

After deciding issues No. 1 and 2 against the defendant, issues No. 3 and 4 in favour of the defendant, issues No. 5 to 8, 10 and 11 against the plaintiffs and issue No. 9 in favour of the plaintiff, decreed the suit except the land, as mentioned in para No. 12 of the written statement.

7. Now, the appeal remains only with regard to the land measuring 13.2 bighas, out of the big estate of the plaintiffs, on which the defendant claims tenancy and thereafter vesting of ownership rights, as per the mandate of H.P. Tenancy and Land Reforms Act.

8. Against the judgment of the learned Trial Court, the appellants (who were the plaintiffs before the learned Trial Court) preferred an appeal, but the same was dismissed by the learned Lower Appellate Court on 26.05.1997. Against the said judgment, the plaintiffs came in regular second appeal and the matter was remanded back to the learned District Judge and hence the impugned judgment.

9. The present appeal was admitted on the following substantial questions of law:

"1. Whether Addl. Distt. Judge, Fast Track Court, Shimla, has mis-construed, misread and misinterpreted pleadings of parties as well as oral and documentary evidence on record?

2. Whether Lower Appellate Court has not been able to record reasons to differ with the findings as recorded by the learned Trial Court with the aid of legal and valid grounds, therefore, findings recorded by learned lower Appellate Court are required to be set aside?

3. Whether the findings recorded by learned Lower Appellate Court are vitiated for want of proper appreciation and consideration of pleadings of parties and evidence on record and therefore, findings recorded by him are liable to be set aside?

4. Whether Trial Court rightly declared defendant/appellant to be a tenant over area measuring 13 bighas, 2 biswas and the reasons as given by learned Trial Court for arriving at such a conclusion having not been found any fault by learned Lower Appellate Court, therefore, appellant has to be held to be a tenant?

5. Whether presumption of correctness as attached to revenue entries have amply been rebutted by appellant as held by Trial Court and the Lower Appellate Court having not considered this point, therefore, jurisdiction has not been exercised properly?"

10. The learned counsel for the appellants has argued that the learned Lower Appellate Court has failed to give findings after appreciating the evidence correctly and so the appeal may be allowed. He has also argued that presumption of truth is attached to the revenue entries, which stood rebutted by the statements of the witnesses and it is clear that the defendant was tenant over the land to the extent of 13.2 bighas on which, earlier to the defendant, Shri Liaquat Ali, was the tenant. On the other hand, learned counsel for the

respondents/plaintiffs has argued that presumption of truth attached to the revenue entries has not been rebutted. He has further argued that defendant was servant of the plaintiff, Raja of Dhami, and he was never a tenant. In rebuttal, the learned counsel for the appellant/defendant has argued that the plaintiffs/respondents have not been able to show any appointment letter, though he has stated that defendant was appointed as servant by an appointment letter. The plaintiffs have also not been able to show any salary or remuneration paid to the defendant and the only possible conclusion that could be drawn is that the defendant was a tenant on the land to the extent of 13.2 bighas. To dispose of the present appeal, I would like to discuss the material, which has come on record.

11. In order to prove the contention that the defendant was inducted as a Manager of the property belonging to the plaintiff and thereafter he maintained the account in respect of the property so managed by him, one of the plaintiff, Shri Dalip Singh (who has expired during the pendency of the suit) has appeared as PW-1 and he has stated that his property is located at Kanori, Majhar, Halog, Khel ka Choura and to look after these properties he appointed various persons, who used to manage the properties and they also used to manage the account, which were checked by him after every six months. This witness has further testified that in respect of the property situated at Kanori, Majhar and Khel ka Chaura, the defendant was appointed as a Manager and in Kanauri there is a house and a temple along with Parao over his property. He has further deposed that there is also land and ghasni belonging to him at Kanauri and at Kanauri there is about 53 bighas of land belonging to him, whereas 12 to 13 bighas of land belongs to Pawan Kumari. As per this witness, the defendant used to cultivate the land situated at Kanori and Majhar and also used to look after the temple. The defendant also used to maintain the account regarding the sales and accounts of the property along with inventory. One house meant for Pujari was also there, but the same was razed by the personnel of DGBR. This witness has deposed that rosin tins were stolen from the godown and the matter was reported to the police, however, the defendant refused to hand over the keys of the godown. The lock of the godown was broke open and 48 tins of rosin were found missing. It is only thereafter the defendant started claiming himself as tenant of the plaintiffs and not the employee. The defendant also refused to render the accounts to the plaintiff regarding the properties, which was under his management. The defendant used to sell the grass worth Rs. 1000/- and he also used to earn Rs. 2000/- from the land. Apart from the above the defendant also used to earn about Rs. 10/- to Rs. 15/- from the Parao. This witness has deposed that the defendant has no right over the property and this witness also tendered in evidence copies of jamabandies and khasra girdawaries.

12. Notice, copy of which is Ex. P-14, was issued to the defendant prior to filing of the suit, its postal receipts are Ex. P-15 and Ads are Ex. P-16. As per PW-1, after the institution of the suit, the defendant has started cultivating some of his land, but he has abandoned the temple as well as the remaining land belonging

to the plaintiffs. This witness, in his cross-examination, has admitted that he never used to cultivate the suit land by himself, but the land was cultivated by him by engaging the labourers. He does not remember the names of the labourers and he did not know that how much land is ghasni and how much is cultivable land. He has further deposed in his cross-examination that when the Manager used to render accounts to him he maintained no record thereof. 10% of the total income used to be paid as remuneration to the defendant, but qua this fact no accounts was being maintained by him. This witness was certain that the defendant was appointed about 10 years back, but on which date/month the defendant was appointed it was not known to him. In his cross-examination PW-1 has further deposed that the defendant was issued letter of appointment, but the same is not in his possession. He has admitted the fact that the defendant has moved an application for correction of revenue entries, however, he has denied that after moving of that application, the suit was filed against the defendant. He has further denied that land measuring 13.3 bighas located at Kanori was earlier used to be cultivated by one Iqwal Ali and after that the defendant is cultivating the said land on payment of galla batai. As per this witness Shri Gusaum and Shri Tulsu Ram earlier were his employees, however, he has denied that both these persons used to collect galla batai from the defendant and further transmitted the same to him. The defendant till 1982 used to render accounts. PW-1 has admitted in his cross-examination that the defendant offered key of the temple to him, but he refused to take the same, as the defendant was asked to render the accounts of the property, which he used to manage. This witness has denied the suggestion that the defendant is a tenant qua land measuring 13.3 bighas on payment of galla batai. Therefore, it is manifest that the defendant was appointed as a Manager of the property belonging to the plaintiffs, as PW-1 has admitted that the defendant was appointed as a Manager about 10 years back through a written appointment order, however, no such appointment order was placed on record to corroborate this statement. On close scrutiny of the statement of PW-1 it has also become manifest that PW-1 has not been able to state the date or month when the defendant was appointed as a Manager nor this witness could state the time when the defendant was appointed. As per this witness, the defendant was a Manager of the property of the plaintiffs and he was not a tenant.

13. Shri Bhandaru Ram (PW-2), who is in the business of buffaloes, has stated that he went to Dhami twice for business where he met the defendant and the defendant supplied him grass and he also stayed in a Parao, which he heard belongs to Raja Sahib. As per this witness, when he stayed in the Parao, both times the charges were received by the defendant. Except the above statement of PW-2, there is nothing material emanating from the statement of this witness and the same cannot at all be relied upon. PW-2 only heard that the Parao belongs to Raja Sahib, but he did not disclose that from whom he has heard the same. The plaintiffs have examined no other witness to establish that PW-2 stayed in the Parao belonging to them. Therefore, the statement of PW-2 went

uncorroborated and same is not trustworthy. PW-3 is a Bank Officer in State Bank, Shimla. Cheque No. D-20/14/330, dated 24.10.1975, copy whereof is Ex. PW-3/A, was debited in current account No. 300 and his statement is only to this effect. On perusal of Ex. PW-3/A it is emanating that this cheque was issued in favour of one Shri Shiv Ram for Rs.700/- on 24.10.1975, but this fact cannot at all be established that the defendant was appointed as a Manager by the plaintiffs for managing their property. Mere issuance of cheque to the defendant by the plaintiffs cannot prove that the defendant was a Manager of the property of the plaintiffs.

14. Shri Partap (PW-4) has deposed that the disputed property is situated at Village Kanori and the defendant is an employee of the plaintiff and he used to look after the property and also the Parao situated there, which belongs to the plaintiffs. This witness has further deposed that in the year 1983 he was sent by the plaintiff to Kanori for checking the register maintained by the defendant, but the defendant said that he will show the same after some time, as the same was not immediately available on demand. PW-1 did not state this fact that PW-4 (Shri Partap) was deputed by him for checking the registers of the defendant. In the absence of corroboration from PW-1, the statement of PW-4 cannot be relied upon and it would be unsafe to rely upon the statement of PW-4 to this extent. PW-4 in his cross-examination has admitted that his father used to be an employee of the plaintiff and he has also served the plaintiff's, which fact further goes to show that PW-4, being an employee of the plaintiff's, also can be held to be an interested witness and, therefore, much reliance cannot be placed on his testimony. PW-4 has further admitted in his cross-examination that the land was never given by the plaintiff in his presence to the defendant nor he knows under what conditions this land was given to the defendant by the plaintiffs. As per this witness, the defendant is in possession of this land for the last 7 to 8 years, which further fails to show that the defendant was in fact Manager of the property of the plaintiffs, as PW-4 could not state that under what condition this land was handed over to the defendant by the plaintiff.

15. PW-5, Shri Rup Chand, did not utter anything qua the land dispute and his statement is of no help to the plaintiffs. As per his statement this witness also used to look after the property of the plaintiffs for the last about five years and he used to receive 10% of income derived by him from the property under his management. In his cross-examination, this witness has admitted that he has not seen the suit land, therefore, the statement of this witness is of no help to the plaintiffs in proving that the defendant was not a tenant and he was a Manager appointed by the plaintiffs to manage their properties. PW-6 and PW-7 have stated that the defendant is looking after the properties belonging to the plaintiffs as an agent and as per PW-6 the defendant used to receive 10% of the total income derived from the properties managed by him. PW-6 has deposed that plaintiffs did not have any tenants, but they are having their agents, who are managing their properties. PW-6 in his cross-examination has admitted this fact that he has also served the plaintiff, however, it goes to establish that this

witness is an interest witness and much reliance cannot be placed on his testimony. Moreover, PW-6 did not disclose his source of information from where he came to know that the defendant used to receive 10% of the total income of the property managed by him and that the defendant was managing the property as an agent and not as a tenant. Likewise, PW-7 has deposed that she used to purchase the grass from the defendant and the defendant was looking after the property situated at Kanori as an employee of the plaintiffs. It is undisputed that the defendant is looking after the property of the plaintiffs, but the point at controversy is that the defendant is looking after the property of the plaintiffs as Manager or as a tenant. The mere fact that PW-7 purchased the grass from the defendant cannot at all demonstrate that the defendant was a Manager rather than a tenant. PW-7 in his cross-examination has admitted that the land situated in Village Kanori is being cultivated by the defendant and this fact is also not disputed. PW-7 did not disclose anything about his source of information. The above statement of PW-7 is not suffice to hold that the defendant is not a tenant and was a Manager looking after the properties of the plaintiffs.

16. Shri Sarupa Nand, Patwari (PW-8) was examined to testify Khasra Girdawari, Ex. P-5 to Ex. P-12, and he has stated that he carried out the Khasra girdawari as per the factual position existing on the spot. Likewise, PW-9 has stated that he remained as Patwari in Halqua from December, 1972 to August, 1975. He has also carried out the girdawari qua the land belonging to the plaintiffs in presence of the defendant and one Shri Gusaun, who were the servants of the plaintiffs. PW-9 in his cross-examination has deposed that he does not know as to what remuneration used to be paid to the defendant by the plaintiffs nor he is in a position to state as to what business the defendant was carrying out. As per this witness, he has not seen any land belonging to the plaintiffs with the defendant and he has also stated that he has not seen anyone cultivating the land situated at Kanori in front of the house of Shri Saran Dass. Therefore, it is doubtful that this witness is stating qua the land in dispute or some other property. As per deposition of this witness he has never seen the defendant in possession of the suit property and he cannot state that the land situated at village Kanori was being cultivated. Whereas, as per the plaintiffs, the defendant was in possession of the land situated in Village Kanori, which belongs to plaintiff and land situated in Village Majhar belongs to plaintiff No. 2.

17. PW-10, Shri Jagdish Chand, was examined to establish that at the instance of Raja Sahib, that is, plaintiff No. 1, tins of rosin were seized from the godown at Kanori and Khel ka Chaura and he is also used to carry out inspection of the godowns. He has further deposed that inspection used to be carried out by him with the assistance of the defendant, who was the servant of the plaintiff No. 1 and the defendant was having the key of the godown. It is noticeable that inspection was being carried out on the order of D.F.O., however, no such order was placed on record to substantiate this fact. It is also noticeable that no witness has been examined on behalf of the plaintiffs to establish that PW-10 used to inspect the godown. The testimony of this witness is marred by a glaring

fact that he has deposed in his cross-examination that when the tins of rosin were stolen, he went to the spot at Khel ka Chaura and Kanori along with the police and the lock of the godown was lying broken, however, as per this witness lock was opened in his presence, whereas, as per the pleadings, the lock of the godown was broken as the defendant refused to handover the keys of the godown when the police went to the spot, which further makes the testimony of PW-10 unreliable. This witness does not know that how many tins were missing from the godown. PW-10 visited the godown with the police, in such circumstances, much reliance cannot at all be placed on his testimony qua the fact that he ever carried out the inspection of the godown.

18. Shri Shingaru (PW-11) was examined to establish that the plaintiffs used to cultivate their land through employees and he was also a servant of the plaintiff for the last 18-20 years. As per statement of this witness, in Village Kanori no land of the plaintiff is in possession of the tenants. However, he has admitted this fact that he is an employee of the plaintiff. Thus, he is also an interested witness, therefore, much reliance cannot be placed on his testimony.

19. The above ocular evidence does not prove that the plaintiffs have appointed the defendant as a Manager and he was not a tenant. Except the statement of PW-1 nothing has come on record that goes to establish that plaintiff was appointed as a Manager and he was not a tenant. The witnesses examined by the plaintiffs are either interested witness or they do not inspire confidence, therefore, their testimonies cannot be safely relied upon. The best evidence for the plaintiffs was the appointment letter issued to the defendant appointing him as Manager, but the same has not been produced by the plaintiffs. Moreover, PW-1 could not state that when the defendant was appointed as Manager. The plaintiffs have not brought on record any documentary evidence which demonstrates that the defendant was managing the property of the plaintiffs as Manager and not as a tenant. The plaintiffs have placed on record copies of jamabandi, Ex. P-1 to P-4 and copies of khasra girdawari, Ex. P-5 to P-12, which depict that the suit land is in ownership and possession of the plaintiffs. No doubt presumption of truth is attached to the copy of jamabandi, but this presumption is always rebuttable. The plaintiffs have also placed on record copy of notice, Ex. P-14, which was issued to the defendant, its reply, Ex. P-17, is also on record. In reply to this notice, the defendant has refuted that he was ever appointed as Manager by the plaintiffs and he has submitted that he is a tenant of the land situated in Village Kanori and he use to pay rent regularly qua the property.

20. In fact, the defendant is claiming himself as tenant over 13.2 bighas of land situated in Village Kanori and he is not claiming any right over the rest of the property. The defendant is also denying that he was ever appointed as a Manager by the plaintiffs. The defendant examined eight witnesses in order to substantiate his claim.

21. The defendant, Shri Shiv Ram (DW-1, since dead) stated that land measuring 13.2 bighas, situated in Village Kanori, belongs to the plaintiffs and he is in

possession of the same on payment of galla batai. As per the defendant, he is in possession of this land for the last 15 to 16 years and prior to that one Iqwal Ali was in possession of this land. He and Iqwal Ali use to pay galla batai to the plaintiffs. The land remained with Iqwal Ali for about 3 years and thereafter the same came into the possession of the defendant on payment of galla batai. The servants of the plaintiffs, that is, Gosaun and Tulsi Ram used to collect galla batai from him. PW-1, in his cross-examination, has admitted that Tulsi Ram and Gosaun were his servants, however, he has denied that they used to collect any galla batai from the defendant qua the land situated at Kanori. As per the defendant (DW- 1), his nephew, Shri Parkash was working as servant with the plaintiff during the period 1974-1976 and cheque, Ex. PW- 3/A, was issued by the plaintiff in lieu of his services and the same was encashed by him. DW-1 has further deposed that in addition to the above mentioned land no other land of the plaintiffs is in his possession. He has denied that he ever rendered any account regarding the crops upto 1982 nor he has ever paid 10% of the income to the plaintiffs. The defendant used to perform Puja in Radha Krishan Mandir at Kanori and money received by him were used by him for the purpose of the temple. On receipt of notice, Ex. P-14, he handed over the keys of the temple to the plaintiffs. This witness has denied that any report was lodged by the plaintiffs qua theft of rosin and he has also denied that rosin was damaged by him. As per this witness, he was never appointed as Manager and so there was no question of rendering any account to the plaintiffs. In cross-examination at length this witness did not state anything contradictory and he has not been tattered. He has further denied that he received any staying charges from the persons staying in the Parao belonging to the plaintiffs. He has denied that he used to lock the rosin. He admitted in his cross-examination that he does not possess any receipt of galla batai. As per this witness, girdawari was carried out regularly and he has denied that he used to look after the property of the plaintiffs situated at Khel Ka Choura. He denied that he has given the land at Village Kanori to some shopkeepers of that locality. No register was being maintained by him qua the temple where he used to perform puja. He has also denied that he used to receive 10% of the total income of the property managed by him belonging to the plaintiffs. He has denied that after receipt of notice he did not hand over the possession of the land nor did he render any account to the plaintiffs.

22. Shri Iqwal Ali (DW-2), as per the defendant, is the person who used to cultivate the land prior to him. DW-2 has fully corroborated the version of the defendant. As per this witness, the land situated at Kanori was in possession of the defendant as a tenant on payment of galla batai and Tulsi Ram and Gosaun were the servants of the plaintiffs, who used to receive rent from him. This witness has stated that he remained in possession of 12 to 13 bighas of land for about 14 to 15 years. He has also stated that after him the defendant came into possession of the land at Village Kanori on payment of rent. This witness has denied that he used to work as Washerman and was dismissed from service on the charges of theft by the plaintiffs and due to this he is having enmity with the

plaintiffs. He does not possess any receipt of rent and he has denied that no land was in his possession, as a tenant, which belongs to the plaintiffs. As per this witness, the defendant was also servant of the plaintiffs and was looking after their property.

23. Shri Tulsi Ram (DW-5), to whom DWs 1 and 2 are alleging that he used to receive the rent from them regarding the land situated at Kanori on behalf of the plaintiff and whom PW-1 has also admitted to be his servant at one time is also very imperative. As per this witness, about 15 to 16 years back he worked with the plaintiffs for about 7 to 8 years along with one Gosaun. He has further stated that the defendant was possessing about 12 to 13 bighas of land at Kanori and he used to pay half galla batai. The galla batai used to be paid by him at his shop and weighed at the shop of one Saran Dass. As per this witness, he used to collect the galla batai on behalf of the plaintiffs and thereafter used to hand over the same to the plaintiffs. Prior to the defendant, the land was in possession of Iqwal Ali. This witness, in his cross-examination, has stated that he left the service of the plaintiffs about 7 to 8 years back. He has denied that grass was sold by him without the permission of the plaintiffs and he has also denied that he was dismissed by the plaintiffs for stealing a cow. He has further denied that the defendant was servant of the plaintiffs and he (defendant) never used to pay rent to him on behalf of the plaintiffs qua the land in his possession. Animosity between the plaintiffs and this witness has not been proved, thus this witness can be safely held as an independent witness.

24. At the cost of repetition, PW-1 in his cross-examination has admitted that Tulsi Ram was his servant and he used to collect rent from the defendant qua the land at Kanori and this fact has been further substantiated by DWs 1 and 2. Therefore, the statements of DWs 1 and 2 stand fully corroborated that the defendant was, in fact, a tenant in possession of the land situated at Kanori and he used to pay rent qua that land. The rent was used to be collected by Tulsi Ram and Gasaun and prior to him, it was Iqwal Ali (DW-2), who was in possession of this land as a tenant. Mere absence of any receipt regarding the payment of rent does not make the testimony of the defendant untrustworthy, as the person to whom the defendant used to pay the rent has fully substantiated the statement of the defendant.

25. Shri Gauria (DW-4) was examined in order to establish that the defendant has purchased stone etc. from the plaintiffs in respect of the houses located on the disputed land. However, the statement of this witness went uncorroborated and thus cannot be relied upon. As regards the fact that the defendant is in possession of the land as a tenant is concerned, this witness did not whisper anything qua the same, but he has stated that it was told to him by the defendant that he is cultivating the land on payment of rent and therefore, the statement of DW-4, being hearsay, cannot be relied upon.

26. Shri Parkash (DW-6) is nephew of the defendant and he has stated that he served the plaintiff for about 27 years on salary of Rs.150/- per month and

during that time the defendant was his guardian appointed by the Court. As per this witness, payment of Rs.700/-, through cheque in October, 1975, was made by the plaintiffs to the defendant for the service of Parkash and after that he made no payment. Shri Tulsi Ram and Shri Gosaun were the servants of the plaintiffs, which is a undisputed fact. This witness has further asserted that Tulsi Ram and Gosaun used to receive the rent from the defendant, which fact is substantiated on record by DW-5 himself. He has denied, in his cross-examination, that defendant was a servant of the plaintiff. He has further stated that in his presence he has seen the defendant paying the rent to Tulsi Ram. However, his statement cannot be relied upon as neither Tulsi Ram nor the defendant has asserted this fact that any payment of rent was made by the defendant to Tulsi Ram in presence of DW-7. This witness, in his cross-examination, has admitted the fact that girdawari was being carried out regularly and the same was done qua this land according to the factual spot position.

27. Smt. Lalita Chauhan (DW-8) was examined in order to prove Ex. DW-8/A to Ex. DW-8/D. On close scrutiny of these documents, it is emanating that DW-8/A is the statement of Iqwal Ali, therein he has stated that for the last 12 to 13 years the defendant in possession of the land on payment of galla batai and prior to this he was in possession of this land on payment of rent. Ex. DW-8/B is the statement of the defendant made before AC 2nd Grade, Shimla, whereas Ex. DW-8/C is the statement of Saran Dass made before AC 2nd Grade, wherein he has stated that the land is in possession of the defendant as a tenant on payment of galla batai. Ex. DW-8/D is the report of girdawar Kanungo, who reported to AC 2nd Grade, Shimla, that the land situated at Kanori, measuring 13.2 bighas is in possession of the defendant as a tenant on payment of galla batai for the last 13 to 14 years and he has recommended the correction in the revenue record regarding this fact, therefore, Ex. DW-8/A to Ex. DW-8/D further go to establish that even on inquiry, which was conducted by Kanungo, pursuant to the application moved by the defendant, for correction of revenue entries, he also recommended the correction in the revenue record to the extent that the defendant is in possession of land measuring 13.2 bighas land at Kanori as a tenant on payment of half galla batai.

28. From the above, it stands fully established on record that the plaintiffs used to receive galla batai from the defendant for the land measuring 13.2 bighas and the presumption of truth attached to the revenue entries showing the plaintiff as owner-in-possession of the said land stands rebutted. Even otherwise also, as far as the possession of the defendant qua the suit land is concerned, it is admitted by the plaintiff, but the case of the plaintiff is that the defendant was his servant. At the same time, as has been observed herein above, the plaintiff has failed to bring any document on record with respect to the appointment of the defendant as a servant, salary paid to him and conclusion is that the defendant was a tenant of the plaintiff on the land to the extent of 13.2 bighas.

29. The Hon''ble High Court of Himachal Pradesh in State of Himachal Pradesh

and others v. Ajay Vij and others, 2011(1) Shimla Law Case 452, has held that the presumption of truth is attached to the revenue record, but the presumption of truth is rebuttable. It has been held that the tenancy is creation of contract between parties, but the contract can be oral as well as in writing. Therefore, as the defendant was a tenant by way of oral understanding and the possession of the defendant is admitted by the plaintiffs and the same has also been proved on record, the conclusion is that the defendant was a tenant on the suit land to the extent of 13.2 bighas. At the same point of time, the Hon'ble High Court of Himachal Pradesh in State of Himachal Pradesh and others v. Ajay Vij and others, 2011 (2) Shimla Law Cases 43, has held that the conferment of property rights on a tenant is automatic in view of H.P. Tenancy and Land Reforms Act.

30. For the reasons, as discussed herein above, it is clear that the learned Lower Appellate Court has given the findings, which are perverse and the Court below has misconstrued, misread and misinterpreted the pleadings of the parties and oral as well as documentary evidence. Therefore, the substantial question of law No. 1 is answered accordingly. Substantial question of law No. 2 is answered holding that the findings of the learned Lower Appellate Court are perverse and not sustainable in the eyes of law. The substantial question of law No. 3 is also answered holding that the findings of the learned Lower Appellate Court are perverse. Substantial question of law No. 4 is answered holding that the findings of the learned Lower Appellate Court are perverse, as there is no reason in setting aside the well reasoned judgment of the learned Trial Court to the extent of not decreeing the suit of the plaintiff to the extent of 13.2 bighas of land, which was under the possession of the defendant as a tenant and on which the defendant has become owner as per the provisions of H.P. Tenancy and Land Reforms Act. Substantial question of law No. 5 is answered holding that the presumption of correctness is always attached to the revenue entries, but this presumption is always rebuttable and here in this case the presumption of truth attached to the revenue entries stands rebutted.

31. The net result of the above discussion is that the appeal filed by the appellant is required to be allowed as the judgment and decree passed by the learned Lower Appellate Court is perverse and is without appreciating the law and documents on record. Accordingly, the appeal is allowed and the judgment and decree passed by the learned Lower Appellate Court is set aside and that of the learned Trial Court is affirmed.

32. In view of the above, the appeal stands disposed of, as also pending application(s), if any, with no orders as to costs.