

(2011) 12 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 453 of 2011

Shri Baldev Singh

APPELLANT

Vs

Shri Raghbir Singh, Smt. Rachna Devi and Shri Nasib Singh

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Citation : (2011) 12 SHI CK 0056

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Justice Rajiv Sharma, Judge

1. This regular second appeal is directed against the judgment and decree passed by the learned Additional District Judge-II, Kangra at Dharamshala in RBT Civil Appeal No.280-G/ 10/06 on 15th July, 2011.

2. Material facts necessary for adjudication of this regular second appeal are that the appellant/plaintiff (hereinafter referred to as "the plaintiff" for convenience sake) has instituted a suit against the respondents/defendants (hereinafter referred to as "the defendants" for convenience sake) seeking perpetual and prohibitory injunction, restraining the defendants from taking their cattle and uprooting the "langana" from the suit land bearing Khata No.35 min, Khatauni No.36, Khasra No.102/1 situated in Mohal Patti, Mauza Kotla, Tehsil Jaswan, District Kangra, Himachal Pradesh alongwith mandatory injunction, directing the defendants to restore the "langana" to its original position. According to the plaintiff, land comprised in Khasra No.102 as per jamabandi for the year 1996-97 is recorded in his ownership and other co-sharers. The nature of the suit land is gair mumkin abadi and there is courtyard of plaintiff. Khasra No.103 is owned by defendant No.1 and other co-sharers. Defendant No.1, i.e. Parmod Singh has moved an application for marking the path through fields Nos. 102 and 103 during the consolidation operation and vide order dated 25th April, 1998, the

Consolidation Officer marked the path through field Nos. 102 and 103 as shown in the remarks column of jamabandi as 102/1 and 103/2. This path passes through his courtyard. According to the plaintiff, the Consolidation Officer has directed that this path shall not be used for taking the cattle by anybody including the parties. Thus, for the protection from cattle and other stray animals, the plaintiff has fixed "langana" on the corner of field No.102/1. The defendants have forcibly removed the "langana" on 5.3.1998. The path in question, as per the plaintiff, is only for the use of inhabitants and not for carrying the cattle.

3. Defendants No.1 to 3 contested the suit. On merits, it is contended that the land shown as owned by defendant No.1 and co-sharers is joint abadi of the parties. It is denied by them that the path passes through the courtyard of plaintiff. According to them, the path has been shown in Khasra Nos.102/1 and 103/2 and has been carved out of joint land of the parties and co-sharers. The nature of path has been shown as share-aam. The houses of the parties adjoining to it have been shown in the attached site plan. The path is in existence since the inception of the abadi and cow-sheds of the parties for the last more than 80 years. The Consolidation Officer could not put the restriction for carrying the cattle from the path. The mutation of share-aam path has also been attested vide mutation No.97 on 17th July, 1998. It has been denied that any "langana" has been fixed on the corner of Khasra No.102/1. According to them, they have been using the path in question uninterruptedly, peacefully, continuously, as of right and the plaintiff has no right to fix the "langana" or cause any obstruction in the passage. According to them, a compromise was entered into between the parties on 1.12.1989 when the plaintiff had tried to block the path.

4. The plaintiff did not file any replication. The learned Civil Judge (Junior Division) framed the issues on 21st September, 2000. He dismissed the suit on 21st April, 2006. The plaintiff preferred an appeal before learned Additional District Judge-II, Kangra at Dharamshala. He dismissed the same on 15th July, 2011. Hence this regular second appeal.

5. Mr. Ashwani K. Sharma, learned counsel for the plaintiff on the basis of substantial questions of law framed, has vehemently argued that both the Courts below have misread and misappreciated the oral as well as documentary evidence adduced by the parties. According to him, the order passed by the Consolidation Officer, dated 25th April, 1998 could not be overlooked by both the Courts below. According to him, only the inhabitants have been permitted to use the passage and not the cattle.

6. Mr. Jai Devi, learned counsel representing defendants No.1 and 2 has supported the judgments and decrees passed by both the Courts below. According to him the Consolidation Officer has no right to restrict the carrying/taking the cattle from the passage falling between Khasra Nos.102/1 and 103/2.

7. I have heard learned counsel for the parties and gone through the pleadings as well as the record carefully.

8. Since both the substantial questions of law are interlinked and interconnected, they are taken up together for consideration to avoid repetition of discussion of evidence.

9. Plaintiff has appeared as PW-1. According to him, his house and courtyard exists in the suit land. He has fixed "langana" The Consolidation Officer has marked the path through his courtyard, which ultimately meets the general path. The cattle never passed through this path. According to him, if the cattle are carried out through his courtyard, the crop kept in his courtyard would get damaged. In his cross-examination, he deposed that defendant, Parmod Singh is his cousin and Hakam Singh, Julfi Ram are also his brothers. According to him, there is a path between Hakam Singh and Gurbachan Singh's house. There is a verandah on both sides of Parmod's house. House of Julfi Ram is towards East of his house. According to him, the path between his and Parmod's house is the same path between Gurcharan and his house. Parmod's courtyard is towards the South side of his house. He has constructed the house in the year 1977, whereas Parmod constructed his house in the year 1965. He has denied that the cow-shed was also constructed in 1965. He voluntarily stated that it was constructed in 1980-85. He has denied that no "langana" has been fixed. He has admitted that the defendants have no other path to go to their houses and this is the only path. He has admitted about the compromise in the year 1989. He has also admitted that Udham Singh, Sher Singh Dogra, Dasaundi Ram and other persons were present at the time of compromise.

10. PW-2, Lachhmi Dass has supported the version of PW-1. According to him, Baldev's courtyard exists in the suit land where he has fixed "langana". According to him, there is one "gohar"/path from the back side to defendants' courtyard, on which defendants have constructed 10 feet wide tractor road. According to him, the defendants' cattle go to jungle from this back side of the cow-shed and never passed from the suit land. He has denied in his cross-examination that his house is at a distance of 3 Kms. from the house of the parties at first instance, later on stated that his house is at a distance of 1/2 Km. He does not own any land in Patti village and Nangal village. He has admitted the existence of the path, but deposed that it was used for human beings. He has also stated that the path is recorded as share-aam two metres wide but only for human beings.

11. PW-3 is Satish Kumar. He has taken photographs Ex.PW-3/A to Ex.PW-3/F, the negatives of which are Ex.PW-3/G to Ex.PW-3/L. In cross-examination, he has stated that he has not brought the original bill book. He has no knowledge about the Khasra numbers of land of which he has taken the photographs and that he has got these photographs developed from Mukerian. Pardeep Mehra has appeared as PW-4. He has prepared the site plan Ex.PW-4/A.

12. Sukhwant Singh appeared as DW1-A. He has stated that he has prepared site plan Ex.DW-1/A. Raghubir Singh has appeared as DW-1. According to him, the path in question is being used by the human beings and the cattle since the time of his ancestors. According to him, the compromise entered in the year 1989 is Ex.D-X. The compromise was read over and after admitting its correctness, the plaintiff and the other persons present on the spot had signed it. He has denied that his father Parmod Singh had moved correction application in consolidation. He deposed that he himself has moved the application. He has admitted that the Consolidation Officer had visited the spot on 25th April, 1998. He has denied that the Consolidation Officer observed that the path is only for the human beings. He has admitted the existence of his cow-shed on Khasra No.62 and garden on Khasra No.63. He has also admitted that from the khad, the tractor can reach his cow-shed. He has also admitted that from the khad, there is one path connecting Baldev's cow-shed and Julfi's house. He has also admitted that the path as shown in Ex.PW-4/A between his and Baldev's house is correct.

13. Sher Singh has appeared as DW-2. He has led his evidence by way of affidavit. He has deposed that in the year 1989, Rachna Devi, daughter-in-law of Parmod Singh had moved the application before the Panchayat. The matter was compromised vide Ex.D-X. The contents of the compromise were read over to the parties and the same was signed by them after admitting its correctness. According to him, no "langana" was placed in this path and he has never seen any langana. According to him, this path is ancestral and the animals also pass through this path. Parmod Singh etc. use this path to reach their fields from abadi and also take their cattle through this path. He has admitted that Ex.D-X is the carbon copy.

14. Nasib Singh has appeared as DW-3. He has never seen the "langana" in the path. According to him, the defendants carry their cattle through this path. He has admitted that he is also one of the defendants in the suit. DW-4 is Gorkhu Ram. He has supported the version of the defendants.

15. The plaintiff has not denied the existence of the path. However, according to him, this path can only be used by the inhabitants and not by the cattle. He has placed strong reliance on Ex.P-3, order passed by the Consolidation Officer on 25th April, 1998. Application was filed by one of the defendants, namely, Parmod Singh for recording the path over Khasra Nos.102 and 103 and order was passed by the Consolidation Officer on 25th April, 1998. The Consolidation Officer had put the condition that the path cannot be used for carrying the cattle. This restriction could not be put by the Consolidation Officer, more particularly, in view of the contents of Ex.D-X whereby the matter was compromised between the parties in 1989. There is no mention that the cattle could not be carried through this path existing between Khasra Nos.102 and 103. The contents of Ex.D-X were read over to the parties and thereafter the parties after admitting its correctness, have signed the same. The plaintiff has admitted that in

compromise Ex.D-X, he has undertaken that he would not put any "langana" over the path in question. It is reiterated that the plaintiff has admitted in his cross-examination that the path in question is the only path to reach the houses of defendants.

16. Mr. Ashwani K. Sharma, learned counsel for the plaintiff has placed strong reliance on the statement of Satish Kumar, PW-3 who has taken photographs Ex.PW-3/A to Ex.PW-3/F. The photographs have been got developed from Mukerian. He has not brought the original bill book. From Ex.PW-4/A, site plan, it is not established that there is any other alternative path available to the defendants. The parties are co-sharers of Khasra Nos.102 and 103. Thus, the defendants cannot be restrained from using the path in question in a particular manner. Mr. Ashwani K. Sharma has also failed to establish how the Consolidation Officer could restrain the movement of cattle over the path once he has passed the order about the existence of path between Khasra Nos.102 and 103, as shown in remarks column of jamabandi for the year 1996/97 as Khasra No.102/1 and 103/2. In the revenue record, the path has been entered as "Rasta Share-aam". According to the defendants they have been using this path for the last more than 80 years.

17. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this regular second appeal and the same is dismissed, so also the pending application(s), if any. No costs.