

(2012) 07 SHI CK 0149

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 180 of 2012 - D

Shri Ram Lok

APPELLANT

Vs

Shri Gian Chand and Sh. Prakash Chand

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0149

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Onkar Jairath, for the Appellant; N.K.Thakur with Mr. Ramesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Sharma, Judge

1. In a suit for grant of a decree of perpetual prohibitory injunction filed by the respondents herein as plaintiffs against the appellant herein being the defendant relating to a piece of land measuring 0-08-61 hectares comprised of khewat No. 198, khatauni No. 378 min, khasra No. 1714, situate in village Nangal Kalan, Sub Tehsil Haroli, District Una, H.P., which shall hereinafter be referred to as "the suit land", the latter (defendant) has suffered concurrent findings of fact. He is in Regular Second Appeal before this court, which is sought to be admitted for hearing on the following substantial questions of Law:-

1. Whether the findings of both the Courts below being the result of misreading and mis-appreciation of pleadings, evidence and law on the point as such stand vitiated. If so, its effect?

2. That when the mortgage deed qua the suit land executed in favour of the defendant by the owners namely Smt. Rajo and the possession was also delivered, thereafter, the requisite entries were made in the revenue record which is evident from Nakal Missal Haquiat Istemaal 1985-86, was there any requirement to produce the lease deed on the record. Decreeing the suit on the

ground that the defendant did not produce the mortgage deed on record is legal and just.

3. That whether the suit is maintainable when the same was filed for permanent injunction/possession on the basis of Jamabandi for the year 1996-97 which is Missal Haquiat Bandobast Jadid Sani which was based upon Missal Haquiat Istemaal prepared during the consolidation proceedings in the year 1977-78 claiming themselves to be owner in possession of the suit land and later on the Consolidation Proceedings were cancelled by the Governor of Himachal Pradesh vide its Notification dated 11.8.2009 and the situation prior to 1977-78 was required to be restored, if so, its effect?

The suit was filed on the basis of Missal Haquiat Bandobast Jadid (present settlement) for the year 1996-1997, wherein the father-cum-successor-in-interest of the plaintiffs is recorded as exclusive owner in possession of the suit land. To the same effect are the entries in Jamabandi Missal Haquiat Istemaal (consolidation) for the year 1985-1986.

2. The case of the defendant was that he is mortgagee in possession of the suit land. However, on a bare perusal of Missal Haquiat Istemaal (consolidation) for the year 1985-86, Ext. D-3, it is manifest that the defendant was recorded as mortgagee under one Mohan Lal and one Smt. Raji, in equal shares, in respect of land measuring 1-19 kanal comprised of khewat No. 372 min, khatauni No. 978, khasra Nos. 2400/1 and 3140, plots 2, meaning thereby that the land in possession of the defendant as mortgager is other than the suit land.

3. In view of the above, the claim of the defendant to the suit land based on mortgage is without any basis or legal foundation, as has been held concurrently by both the learned courts below. Accordingly, the appeal which does not raise any question of law, what to say of a substantial question of law, is dismissed being without any merit. In view of dismissal of the appeal, pending CMP No. 319 of 2012 shall also stand dismissed as infructuous.