

(2009) 08 SHI CK 0005
In the High Court Of Himachal Pradesh

Shri Sukaru Ram and Others	Vs	APPELLANT
Shri Chamaru and Others		RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Specific Relief Act, 1877 — Section 6

Citation : (2009) 08 SHI CK 0005

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This regular second appeal is directed against the judgment and decree dated 1.9.1998 passed by the learned District Judge, Mandi in Civil Appeal No. 45 of 1995.

2. Brief facts necessary for adjudication of this regular second appeal are that the predecessor-in-interest of respondents, Shri Sanatu (hereinafter referred to as the plaintiff for convenience sake) had filed a suit in the Court of Sub Judge 1st Class, Mandi for permanent prohibitory injunction against the appellants/defendants (hereinafter referred to as the defendants for convenience sake) stating that he was owner in possession of the suit land as described in paragraph 1 of the plaint. It is further averred that the suit land has been in ownership of plaintiff with other co-sharers under peaceful cultivation of the plaintiff. The defendants had started interfering with the peaceful possession of the plaintiff since Whether reporters of the local papers may be allowed to see the judgment? No 31.5.1984. The suit was contested by the defendants. It is averred that defendant No. 1 Shri Sukaru Ram was in peaceful possession of the suit land for the last 25 years. It is further averred that the defendants are ?Gair Maurusi? tenants over the suit land. The learned trial Court dismissed the suit on 28.4.1995. The plaintiffs preferred an appeal before the learned District Judge, Mandi against the judgment of the learned Sub Judge dated 28.4.1995. The learned District Judge allowed the appeal on 1.9.1998. This regular second

appeal is directed against the judgment and decree passed by the learned District Judge, Mandi. It was admitted on the following substantial questions of law:

1. Whether the plaintiffs whose title is denied by the defendants and who are out of possession, the ?further relief? would be recovery of possession or merely a suit for injunction and if such relief is not claimed the suit would be bad suit or not?

2. Whether in a suit where interference with the possession of the Immovable property amounting to dispossession, a suit for injunction will suffice or the plaintiffs will have to bring a possessory suit under the provision of Section 6 of the Specific Relief Act relying upon the bare fact of his former possession, or may sue for recovery of the property in ordinary way relying on his title to the property?

3. Mr. Ajay Kumar has strenuously argued that the judgment and decree of the learned District Judge is not sustainable in the eyes of law. He has contended that the learned District Judge has misread oral and documentary evidence. He has also referred to Section 6 of the Specific Relief Act.

4. Mr. Bhupender Gupta has supported the judgment and decree passed by the learned District Judge, Mandi.

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

6. Since both the substantial questions of law are interconnected and inter-linked, they have been taken up together for adjudication to avoid repetition of discussion of evidence.

7. Shri Chamaru, son of Shri Sanatu has appeared as PW-1 who is special power of attorney of the plaintiff and his son. He has stated that defendant Sukaru Ram was never inducted as tenant. He maintained that the plaintiff was in possession of the suit land and he cultivates this land on behalf of his father. His version has been supported by PW-2 Fatey. Shri Sukaru Ram has appeared as DW-1. He maintained that he was in possession of the suit land. According to him, he was inducted as tenant by Sanatu and he had paid the rent to him. DW-2 Ratta Ram has deposed that the defendant was in possession of the suit land for the last 35-36 years. He himself was 46 years of age at the time of recording his evidence. In his cross-examination, he admitted that no tenancy was created in his presence nor Sukaru Ram was put in possession of the land. DW-3 Saran Dass deposed that Sukaru Ram was in possession of the suit land and in his cross-examination admitted that the suit land was cultivated by Chamaru, son and special power of attorney of Sanatu. He also admitted that no rent was paid in his presence. In copy of Settlement Jadid Misal Haqiat for the year 1980-1981 (Ext. P-2), Shri Sanatu has been shown to be owner in possession of the land. Till the filing of the suit, as per Khasra Girdawari Ext. P-3, Sanatu has been

shown in possession of the entire suit land. It is borne out from the records that Sukaru moved an application for correction of the revenue entries in respect of the land. It was allowed. However, the learned Divisional Commissioner, Mandi set aside this order on 12.4.1994. He has given a finding that there was no relationship of landlord and tenant between plaintiff and his son-in-law Sukaru Ram. Sukaru Ram has failed to prove how and when he came in possession of the suit land. There is nothing in the evidence to establish that the plaintiff was ever dispossessed by the defendants. In case Sukaru Ram was inducted as tenant, revenue entries were required to be made to this effect. Sukaru Ram has failed to prove that he has ever paid rent to the plaintiff. He has not placed on record any receipt to this effect.

8. In view of the observations made hereinabove, it is established that the plaintiff was in possession of the suit land on the basis of oral as well as documentary evidence. Since there is categorical finding recorded by the learned District Judge that the plaintiff always remained in possession, there was no need to file the suit u/s 6 of the Specific Relief Act as argued by Mr. Ajay Kumar. It is re-iterated that the defendant has failed to prove that he was ever inducted as tenant by the plaintiff.

9. Accordingly, in view of the observations made hereinabove, there is no merit in this regular second appeal and the same is dismissed. No costs.