
(2012) 07 SHI CK 0130

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 130 of 2001 along with Cross Objections No. 234 of 2001

Sita Ram Sharma (since deceased) through L.R.S:- Smt.
Bhuvneshwari and Others

APPELLANT

Vs

Durga Dass and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0130

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Sunil Mohan Goel,s/ Non-Objectors, for the Appellant; K.D. Sood with Mr. Rajnish K. Lall, Advocate, For the Respondents Nos. 1to 4/Cross-Objectors, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh, J.—This judgment shall dispose of R.S.A. No. 130 of 2001 and Cross-Objections No. 234 of 2001. The appeal is directed against judgment, decree dated 30.11.2000 passed by learned Additional District Judge, Mandi, in Civil Appeal No. 66 of 1996, affirming judgment, decree dated 31.05.1996 passed by learned Sub Judge Ist Class, Sundernagar, in Civil Suit No. 93 of 1992. The respondents No. 1 to 3 had filed suit for permanent prohibitory and mandatory injunction against Sita Ram, predecessor?in-interest, of the appellants. The respondent No. 5 was defendant No. 2 and respondent No. 4 was proforma defendant No. 3 in the suit. In the appeal, Cross-Objections No. 234 of 2001 have been filed by respondents No. 1 to 4.

2. The parties in the judgment are referred as plaintiffs and defendants. The plaintiffs had filed a suit for permanent prohibitory injunction against defendants 1, 2 restraining them from causing interference in the possession of the plaintiffs and raising construction over the suit land comprised in Khasra No. 3057, measuring 524 square metres, Mohal Sundernagar. The prayer for mandatory

injunction was also made. It has been pleaded that plaintiffs and proforma defendant No. 3 are joint owners in possession of the suit land. The defendant No. 2 is a contractor and has been engaged by defendant No. 1 for constructing house, who started construction on 17.05.1992. The defendants 1,2 have no right, title and interest over the suit land. The defendants are raising construction in such a manner that they are encroaching the suit land to the extent of 28 square metres.

3. The defendants No. 1 and 2 contested the suit by filing written statement. They have taken preliminary objections of cause of action, jurisdiction, valuation, maintainability and estoppel. On merits, it has been denied that plaintiffs are owners of the suit land. The "Sajra-Musavi-Kistwar" prepared during the course of settlement is wrong. The area has not been converted correctly with the result that area has been reduced. It has been denied that the construction was started on 17.05.1992. The construction was started in the year 1988. The tatima prepared by Patwari halqua is wrong. The Patwari is not competent to demarcate the land. The remaining claim of the plaintiffs was denied.

4. The plaintiffs filed replication to the written statement of defendants. On the pleadings of the parties, the following issues were framed:-

1. Whether the defendants have constructed the residential house over the land of the plaintiffs to the extent of 28 Sq.metres, as alleged? OPP.
2. Whether the plaintiffs are wrongly recorded owners in possession of the suit land as alleged in Para-1 of the written statement? OPD.
3. Whether the plaintiffs have suppressed the material facts and as such, the suit for injunction is not liable? OPD.
4. Whether the plaintiffs have no enforceable cause of action? OPD.
5. Whether the suit is not valued properly for the purpose of court fee and jurisdiction? OPD.
6. Whether the suit is not maintainable in the present form? OPD.
7. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD.

8 Relief.

5. All the issues were answered in negative and the suit was partly decreed by trial Court on 31.05.1996. It was directed that defendants shall not raise any construction of house except in accordance with the house map approved by the Municipal Committee, Sundernagar. The remaining claim of the plaintiffs was dismissed. The defendant No. 1 filed appeal. The plaintiffs and proforma defendant No. 3 filed cross-objections in the appeal. The learned Additional District Judge decided the appeal and cross-objections by common judgment dated 30.11.2000 and dismissed the appeal as well as cross-objections, hence

second appeal by defendant No. 1. In the appeal, the plaintiffs and proforma defendant No. 3 have filed cross-objections. The appeal has been admitted on following substantial question of law:-

Whether the Courts below were right in issuing directions to the appellant-defendant that he will not raise any construction except in accordance with approved house?map by the Municipal Committee, Sundernagar even after recording the findings on issues 1 and 2 against the respondents-plaintiffs and not giving any relief in respect of these issues?

The cross-objections were taken on record on 07.06.2001 without any specific order of admission of the cross-objections.

6. I have heard learned counsel for the parties and have also gone through the record. The learned counsel for the appellants-defendants has submitted that both the Courts below have erred in decreeing the suit of the respondents-plaintiffs with the direction that the defendants shall not raise any construction of the house except in accordance with the house map approved by the Municipal Committee, Sundernagar. The construction of the house as per plan approved by the Municipal Committed was not in issue. The plaintiffs filed the suit alleging that the defendants are raising construction on the land of the plaintiffs and they have even encroached 28 square metres land of the plaintiffs. The Courts below did not find any encroachment by defendants over the land of the plaintiffs. Therefore, direction of the Courts below that defendants shall not raise construction of the house except in accordance with the house map approved by the Municipal Committee, Sundernagar, is beyond the pleaded case of the plaintiffs.

7. The learned counsel for the plaintiffs while supporting the impugned judgment, decree has submitted that the Courts below have not addressed real controversy in issue. The learned Additional District Judge has not considered the cross-objections filed by the plaintiffs. He has submitted that the cross-objections of the plaintiffs may be allowed and the suit may be decreed as prayed.

8. The perusal of the plaint indicates that the plaintiffs had raised grievance against the construction of the defendants on the plea that defendants while raising construction of the house have encroached the land of the plaintiffs to the extent of 28 square metres. In the plaint, no grievance has been raised by the plaintiffs regarding the house plan of the defendants. There is no averment in the plaint that map approved by the Municipal Committee for the construction of the house of defendant No. 1 is beyond the boundary limits of the land owned by defendant No. 1. The plaintiffs filed simple suit for permanent prohibitory injunction of interference by defendants while raising construction over the land owned and possessed by plaintiffs. They have also pleaded mandatory injunction.

9. The trial Court has recorded specific finding that the defendants have not encroached any part of land owned by plaintiffs. There is substance in the

submission of learned counsel for the defendants that the approved house map of defendant No. 1 was not in issue. The Courts below have gone beyond the pleaded case of plaintiffs while decreeing the suit of the plaintiffs with a direction that defendants shall not raise any construction of the house except in accordance with the house map approved by the Municipal Committee, Sundernagar.

10. The direction given by the Courts below has caused prejudice to the defendant No. 1 inasmuch defendant No. 1 was not given opportunity to meet the case of plaintiffs regarding construction as per map of defendant No. 1 approved by Municipal Committee, Sundernagar. In these circumstances, the direction given by the trial Court and affirmed by lower appellate Court that defendants shall not raise any construction of the house except in accordance with the house map approved by Municipal Committee, Sundernagar, is not sustainable. The above substantial question of law is decided in favour of defendant No. 1/appellants.

11. The learned counsel for the plaintiffs has submitted that the learned Additional District Judge has not considered the cross-objections of the plaintiffs filed in the appeal of the defendants. No doubt, the learned Additional District Judge in so many words has not discussed the cross-objections filed by the plaintiffs, however, in the impugned judgment, he has noticed the cross-objections filed by the plaintiffs. The learned Additional District Judge has considered the overall case. The judgment, decree passed by both the Courts below to the extent direction given by the Courts below that defendants shall not raise any construction of the house except in accordance with the house map approved by Municipal Committee, Sundernagar, has been held by this Court beyond the pleaded case of the plaintiffs. The cross-objections filed by the plaintiffs in the present appeal have not been admitted, those have just been placed on record. I have considered the cross-objections along with the evidence. There is no merit in the cross-objections.

12. No other point was urged. In view of above discussion, the appeal is allowed, the cross-objections are dismissed. The impugned judgment, decree are set aside and suit of the plaintiffs-respondents is dismissed with no order as to costs.