
(2013) 02 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : RSA No. 22 of 2003

Smt. Shanti Devi alias Santi Devi through Shri Naginder
Singh as General Power of Attorney

APPELLANT

Vs

Smt. Geeta Devi and Others

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 02 SHI CK 0004

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sood, J.—This appeal has been preferred by the plaintiff, who has lost in the two Courts below. The suit of the plaintiff was for declaration and for permanent injunction as being owner in possession of the land comprised in khasra Nos. 604/329 605/329, 611/356/328, 613/350/330, 614/359/330, 625/353/324, 626/353/324, khewat No. 11, Khatauni No. 14, measuring 31 bighas and 9 biswas, situated in village Manma, Pargana and Tehsil Saddar, District Bilaspur and restraining the defendants permanently from causing interference in any manner in possession of the suit land as owner and alternatively for possession in case it is found that she was out of possession. The suit was contested on a number of grounds. Seven issues were settled by the learned trial Court on the pleadings. On findings rendered on these issues, the suit of the plaintiff was dismissed. In appeal, the learned District Judge considers the entire case of the plaintiff in paragraph 13 of the judgment without in any manner touching on four crucial issues settled before the learned trial Court which have been found in favour of the defendants, namely, issue No. 4-B which raises question of limitation, issue No. 4-C on the maintainability of the suit on the ground that the consolidation proceedings were completed before the institution of the suit and no case could be filed on the basis of the jamabandis which are prior to the consolidation proceedings,, issue No. 5 on the maintainability of the suit on the ground that earlier suit on the same cause of action was dismissed under order 9, Rule 8 of the CPC and lastly, defendants

were tenant over the suit property as they had acquired proprietary rights under law, namely, H.P. Tenancy and Land Reforms Act. The issues framed were: 4-B. Whether the suit is not within time as alleged? OPD

4-C. Whether the consolidation proceedings had been completed before the institution of the suit and the suit having been filed on the basis of old jamabandi is not maintainable as alleged? OPD

5. Whether the plaintiff has filed an earlier suit on the same cause of action which was dismissed under Order 9, Rule 8, CPC if so its effect: OPD

6. Whether the defendants were tenants over the suit land and they have acquired proprietary rights by operation of H.P. Tenancy and Land Reforms Act? OPD.

On the reading of the judgment of the learned District Judge, I find no consideration of these issues as he was bound consider them for the reasons that finding on each issue vitally affects the rights of the plaintiff. I cannot accept the submission made on behalf of the defendants that these issues had either been considered by the learned Judge while deciding the appeal or that they were abandoned. A plain reading of para 13 of the judgment of the learned First Appellate Court shows no consideration of these issues at all. On the second aspect of abandonment of issues, I find it difficult to accept this contention as finding on each issue individually or jointly non-suits the plaintiff. 2. In these circumstances, I am left with no option except to remand the case to the learned First Appellate Court for decision afresh in accordance with law. I do realize that a remand after a period of 20 years is a painful exercise but, nonetheless, to do complete justice to the parties it would be necessary if the appeal is decided afresh in accordance with law on the grounds raised by the plaintiff herein.

3. In *M/s. Hindustan Times Limited Vs. Union of India and Others*, , the Court holds:

7. At the outset, we may say that the Division Bench of the High Court of Delhi ought to have given reasons at least briefly, which dismissing the writ petition in limine. As stated in *Fauja Singh Vs. Jaspal Kaur*, , on the plainest consideration of justice, the High Court should have given reasons. The absence of reasons has deprived the Supreme Court from knowing the circumstances which weighed with the High Court to dismiss the matter in limine. It was an unsatisfactory method of disposal. The necessity to provide reasons, howsoever brief, in support of the High Courts' conclusions is too obvious to be reiterated. Obligation to give reasons introduces clarity and excludes or at any rate minimizes the chances of arbitrariness and the higher forum can test the correctness of those reasons. It becomes difficult for this Court in all such cases to remit the matters to the High Court inasmuch as by the time cases reach this Court, several years would have passed.

8. In an article "On Writing Judgments", Justice Michael Kirby of Australia

[(1990) (Vol. 64. ALJ p.691)] has approached the problem from the point of view of the litigant, the legal profession, the subordinate Courts/tribunals, the brother Judges and the judges' own conscience. To the litigant, the duty of the Judge is to uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the Judgment for the learning and precedent that they provide and for the reassurance of the quality of the Judiciary which is still the centre-piece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact etc. The reputational considerations are important for the exercise of appellate rights, for the Judges' own self-discipline, for attempts at improvement and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of Judges and tribunals is of utmost importance. Justice Asprey of Australia had even said in *Pettit vs. Dankley* [(1971 (1) NSWLR 376 (CA))] that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant. In our view, the satisfaction which a reasoned Judgment gives to the losing party or his lawyer is the test of a good Judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal.

4. It has also been by now well settled that the first appeal statutorily confined to record the findings on the facts and the evidence on record as well as law (See. *Ayodhya Singh Vs. State of Bihar and Others*, ; *Sanjay Singh Rawat and others versus National Small Industries Corporation Ltd. and others*, (2005) 12 SCC 146; *Rama Pulp & Paper Ltd. versus Maruti N. Dhotre*, (2005) 12 SCC 186; *Madhukar and Others Vs. Sangram and Others*, , *State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs.*, and *Jagdish Chand Gupta Vs. Sandeep Arora*,).

5. In these circumstances, substantial questions of law as raised in this appeal did not require determination by this court. Parties are directed to appear before the learned District Judge, Bialspur on 29th April, 2013. Record be sent back forthwith. Direction issued to the learned first Appellate Court to dispose of the appeal on or before 13th August, 2013. No fresh evidence is allowed to be led by the parties. Appeal stands disposed of. All pending miscellaneous applications also stand disposed of.