

(1997) 06 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 88 of 1992

State of Himachal Pradesh and Others

APPELLANT

Vs

Ved Parkash

RESPONDENT

Date of Decision : 13-06-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5

Citation : (1997) 3 ShimLC 252

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

**Advocate : Ashok Chaudhary, Assistant Advocate General, for the Appellant;
B.K. Sood and vice K.D. Sood, for the Respondent**

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The Defendants have directed the present regular second appeal against the judgment and decree dated 5-10-1991 of the learned Additional District Judge (1), Kangra at Dharamshala reversing the judgment and decree dated 29-9-1986 of the learned Sub-Judge Ist Class, Kangra

The subject-matter of the dispute between the parties is the land measuring 0 05-34 hectares comprising of 2685 and 2686 of Mohal Lidhar, Mauza Nagrota Bagwan, Tehsil and District Kangra, specifically detailed in the plaint and hereinafter referred to as the land in dispute.

2. Briefly stated, the facts of the case as are enumerated in the plaint are these. The land in dispute was evacuee property. The same was, purchased from the Central Government by Gopal Dass, the father of the Plaintiff on 29-4-1960 The said Gopal Dass since after the purchase remained in possession of the land in dispute as owner thereof till his death The Plaintiff succeeded to the land in dispute after the death of his father. The nature of the land in dispute was "Ghair Mumkin Kharetar". Defendant No. 2 without any right, title or interest therein encroached upon the land in dispute and has constructed a latrine on a part of

the land in dispute comprising of khasra No. 2685 The land in dispute which is close to the school, has been fenced by the Defendants by way of encroachment. In spite of having been repeatedly called upon to handover the possession, the Defendants failed to do so. The Plaintiff accordingly filed a suit for possession thereof,

3. The Defendants while resisting the suit pleading that the land in dispute is being relected as "shamlat Upmohal Haja" in the column of ownership in the revenue record and being shown as in possession of Central Government through Gopal Dass. The actual possession is, how-ever, with the Education Department of the State through Principal, Government Higher Secondary School, Nagrota Bagwan. Objections as to locus standi of the Plaintiff, estoppel, jurisdiction, valuation and maintainability of the suit were further raised.

4. The suit of the Plaintiff was dismissed by the learned trial Court vide judgment and decree dated 29-9-1986 It was held that Defendants were in illegal possession of the land in dispute. The Plaintiff was, however, non-suited on the ground that he had failed to prove his title qua the land in dispute and as such, he was not entitled to possession thereof.

5. The Plaintiff went up in appeal before the learned District Judge, Kangra at Dharamshala. The appeal came to be heard and decided by the learned Additional District Judge. The findings of the learned trial Court holding the Plaintiff to be not the owner of the land in dispute and as such suit was not maintainable were set aside The learned Additional District Judge,, after setting aside the judgment and decree of the learned Sub-Judge, granted a decree for possession of the land in dispute in favour of the Plaintiff by way of demolition of superstructure in the form of latrine constructed therein by the Defendants.

6. Feeling aggrieved by and being dissatisfied with the judgment and decree dated 5-10-1991 of the learned first appellate Court, the Defendants have come up before this Court by way of the present second appeal.

The present regular second appeal was admitted on the following substantial questions of law:

1. Whether the Plaintiff can be held to be the owner of the land in question earlier admittedly evacuee property, in the absence of production of sale certificate in favour of his predecessor? and

2. Whether the first appellate Court has misread evidence to hold the Plaintiff to be the owner of the land in question?

I have heard the learned Counsel for the parties and have also gone through the record of the case

Admittedly, the land in dispute was carved out of old khasra No. 156 measuring 3 bighas 14 biswas during the course of settlement. This fact is established from the jamabandi for the year 1978-79 copy Ex. D-4.

7. Ex P-1 is the copy of jamabandi for the year 1960-61 in respect of old khasra No. 156. The land is recorded as "Shamlat Deh" in the column of ownership and in possession of Custodian Department. The entry in the remarks column shows that the land comprising of khasra Mo. 156 was sold in favour of Gopal Dass in a public auction vide sale certificate dated 29-4-1960 for a consideration of Rs. 1050.

8. The documents produced by the Defendants themselves comprising of revenue record Ex D-3 to D-5 consisting of jamabandi for the years 1905-66, 1978-79 and 1982-83 also record the factum of the land in dispute having been purchased by the deceased Gopal Dass from the Custodian Department and thereafter having been succeeded by the Plaintiff.

9. The Plaintiff while appearing as PW 1 has categorically stated that the land in dispute was purchased by his father from the Custodian Department. He was not cross-examined by the Defendants on this point. Therefore, the only presumption is that the Defendants admit that land in dispute was purchased by the father of the Plaintiff from the Custodian Department,

10. It is further significant to note that there are specific pleadings by the Plaintiff in para 1 of the plaint that the land in dispute was purchased by the predecessor in-interest of the Plaintiff from the Central Government. The Defendants in their written statement have not denied this fact at all. They have remained silent on this aspect.

Rule (3) of Order 8, Code of Civil Procedure, provides:

It shall not be sufficient for a Defendant in his written statement to deny generally the grounds alleged by the Plaintiff; but the Defendant must deal specifically with each allegation of fact of which he does not admit the truth except damages.

Rule (5) of Order 8 further provides that every allegation in the plaint, if not specifically denied or by implication or stated to be not admitted in the pleadings of the Defendant, shall be taken to be admitted except as against a person under disability.

11. Reading the written statement of the Defendants as a whole, it can be safely concluded that the title of the Plaintiff qua the land in dispute has neither been denied specifically nor by implication by the Defendants. Therefore, on the failure of the Defendants to deny the title of the Plaintiff either specifically or by necessary implication, the Defendants will be deemed to have admitted the title of the Plaintiff within the meaning of Rule (5) of Order 8, CPC. On the face of such an admission, the Plaintiff was not obliged to produce the sale certificate vide which the land in dispute is purported to have been purchased by his father from the Custodian Department.

12. The learned first appellate Court has appreciated the evidence in a proper manner and in its right perspective in arriving at the conclusion that the Plaintiff

is the owner of the land in dispute.

The two substantial questions propounded in the present appeal, therefore, have to be answered in the affirmative and negative respectively.

13. A contention was raised on behalf of the Defendants that they have acquired title to the land in dispute by way of adverse possession. Suffice to say that the Defendants cannot be permitted to raise this plea in the absence of the necessary pleadings in this regard. It is well settled that the plea with regard to the adverse possession must be raised in the pleadings.

14. Even otherwise, the evidence coming on the record shows that the Defendants came into possession of the land in dispute only in 1977. The suit was filed on 1-3-1984. Therefore, the possession of the Defendants falls short of the requisite statutory period of twelve years and as such they cannot be said to have acquired title to the land in dispute by adverse possession.

Resultantly, the present appeal fails and the same is dismissed with costs qualified at Rs. 1,500

15. Before parting, it may be stated that the land in dispute has been encroached upon and being used by the Defendants for the purpose of the school. A latrine for the use of students has been constructed therein. Keeping in view the interests of the students, it is ordered that the decree for possession granted in favour of the Plaintiff shall not be executed till 31-12-1997. In the interregnum, the Defendants may take necessary steps for the acquisition of the land in dispute, if they so choose, and complete such acquisition proceedings by 31-12-1997.