
(2010) 05 SHI CK 0152
In the High Court Of Himachal Pradesh

State of Himachal Pradesh	Vs	APPELLANT
Madan Singh and Others		RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2010) 05 SHI CK 0152

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The State has come in appeal against judgment, decree dated 1.5.2000 passed by the learned District Judge, Shimla in Civil Appeal No. 69-S/13 of 1998 modifying the judgment, decree dated 30.3.1998 passed by learned Sub Judge (1), Rohru in Civil Suit No. 143/1 of 1993 and decreeing the suit of the respondents declaring them owners in possession of entire area of the suit land allotted to them vide "Patta", copy Ex.PW-2/A and restraining the appellant from interfering in their possession over the suit land.

2. The facts, in brief, are that respondents had filed a suit for declaration that they are owners in possession of land comprised in khasra No. 160/1, measuring 37 bighas, situated in Chak Shallar Tehsil Jubbal on the basis of "Patta" issued in the year 1909 by the then owner Kedar Singh, the ruler of Ranvigarh State. It is the case of the respondents that Maniya the grand father and Karmu the father of the respondents had been rendering services to the ruler of Ranvigarh. In recognition of their services in the year 1909, the ruler Kedar Singh conferred ownership of the suit land on the predecessor-in-interest of respondents through "Patta". The respondents are coming in possession as owners of the suit land through their ancestors. The revenue record maintained by the appellant is not correct. This fact was noticed by the respondents in the year 1991 during settlement. They moved an application for correction of entry but to no avail and, therefore, the suit was filed.

3. The appellant resisted the suit on various grounds such as lack of notice u/s 80 of C.P.C., jurisdiction, non-joinder of parties and maintainability. The "Patta" was not denied specifically but challenge was made to the authority of the ruler to grant land on "Patta". The possession of the respondents was denied. It was submitted that respondents had encroached land measuring 20-7 bighas comprised in Khasra No. 321/160/2 in the year 1985 and ejectment proceedings have been initiated against the respondents. The replication was filed by the respondents and denied the case of the appellant. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiffs are owners in possession of the suit land, as alleged? OPP.
2. Whether late Sh.Karmu was issued a patta with respect to the suit land by late ruler of Ranvigarh State? OPP.
3. Whether the plaintiffs have no cause of action to institute the present suit? OPD.
4. Whether the plaintiffs have no locus-standi to file the present suit?. OPD.
5. Whether this Court has no jurisdiction to entertain and decide the suit? OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiffs have failed to comply with the mandatory provisions of Section 80 CPC? OPD
8. Whether the suit is bad for non-joinder of necessary party? OPD
9. Whether the suit is time barred? OPD
10. Relief.

The issue No. 1 was answered in affirmative but it was held that respondents are in possession of 20-7 bighas only. Issue No. 2 was answered in affirmative, issues No. 3 to 9 were answered in negative and the suit of the respondents was decreed to the extent of 20-7 bighas. The respondents filed appeal against the decision dated 30.3.1998 whereas the appellant did not file any appeal or cross-objections against the judgment, decree dated 30.3.1998. The learned District Judge accepted the appeal of the respondents on 1.5.2000 and decreed the suit of the respondents in entirety by declaring them owners in possession of the entire area of suit land allotted to respondents vide "Patta" Ex.PW-2/A. The appellant was also restrained from interfering in possession of the respondents over the suit land. The State has come in second appeal which has been admitted on the following substantial question of law:

Whether the Civil Court does not have jurisdiction in view of the bar created u/s 171 of H.P. Land Revenue Act, particularly when proceedings u/s 163 of the Act were initiated against respondents-plaintiffs and whether the plaintiffs could set up their title in those proceedings instead of filing a suit?

4. I have heard Mr. P.K. Sharma, learned Additional Advocate General for the appellant and Mr. S.M. Goel, Advocate, learned Counsel for the respondents and have also gone through the record. The learned Additional Advocate General has submitted that the suit is barred u/s 171 of the H.P. Land Revenue Act, 1954 (for short "Act") in view of proceedings u/s 163 of the Act against the respondents. The learned Counsel for the respondents has submitted that there is no material on record that proceedings u/s 163 of the Act were initiated against the respondents regarding the suit land by the appellant. He has supported the impugned judgment, decree and prayed for dismissal of the appeal.

5. In written statement the appellant in preliminary objection No. 3 has taken the plea that the Court has no jurisdiction to entertain and decide the suit in view of the provisions of the H.P. Land Revenue Act. In para 8 of the reply on merits, the appellant has also pleaded that Court has no jurisdiction to entertain the suit. In para No. 5 of the written statement, it has been pleaded that the ejectment proceedings are pending before the Assistant Collector, 1st Grade, Jubbil. The respondents have filed replication, they have denied the preliminary objection No. 3, paras 5 and 8 reply on merits in the written statement. In these circumstances, it was incumbent upon the appellant to prove that ejectment proceedings u/s 163 of the Act were pending against the respondents regarding suit land so as to invoke Section 171 of the Act.

6. PW-1 Chet Ram, who is one of the respondents/plaintiffs in cross-examination has denied that proceedings of ejectment are pending against him before the Tehsildar, Jubbil. In cross-examination, he has stated that it is quite possible that ejectment proceeding against his brother regarding land comprised in khasra No. 321/106/2 might be pending before Tehsildar, Jubbil. PW-2 Jagat Ram is a witness to the identification of signatures of Thakur Kedar Singh on "Patta" a copy of which is Ex.PW-2/A. PW-3 Kanwar Shish Singh is a witness that respondents are in possession of the suit land through their ancestors. In cross-examination, he has also stated that he does not know whether any proceedings of unauthorized possession were pending before Tehsildar. PW-4 Madho Ram is a witness that land in dispute is in possession of respondents through their ancestors. He has stated that he does not know that in the year 1985 ejectment proceedings were initiated against the respondents. DW-1 Surat Ram, retired Kanungo has stated that he was posted in Chak Shillar, Tehsil Jubbil at the time of settlement from 1991 to 1993 as Kanungo. He has seen the disputed land. In cross-examination, he has stated that during settlement respondent Madan Singh has shown to him and Naib-Tehsildar (Settlement) "Patta" copy Ex.PW-2/A. He has also stated that "Patta" is of Khasra No. 160 min measuring 37 bighas.

7. The aforesaid witnesses only appeared on behalf of the either side in the suit. Ex.PW-2/A is the copy of "Patta". It has been contended on behalf of the appellant that ejectment proceedings were initiated u/s 163 of the Act against the respondents, therefore, suit is not maintainable u/s 171 of the Act. The appellant has led no evidence to establish the fact that proceedings u/s 163 of

the Act were initiated against the respondents. In case the proceedings were initiated against the respondents u/s 163 then documentary evidence to this effect could have been easily placed on record by the appellant. But nothing has been placed on record to show that proceedings u/s 163 of the Act was initiated by the appellant against respondents. The solitary witness DW-1 Surat Ram produced by the appellant has said nothing about the ejectment proceedings u/s 163 of the Act against the respondents regarding the suit land. Thus, the appellant has miserably failed to prove that any ejectment proceedings u/s 163 of the Act were initiated against the respondents. The appellant has thus failed to prove necessary facts to invoke Section 171 of the Act. The trial Court had decreed the suit of the respondents to the extent of 20 bighas 7 biswas. The appellant accepted the judgment, decree of the trial Court as the appellant did not file any appeal/ cross appeal against judgment, decree dated 30.3.1998. The learned District Judge has modified the decree and decreed the suit of the respondents in its entirety after considering the material on record. The findings returned by the learned District Judge emerge from the evidence on record. There is no perversity in the impugned judgment, decree. The substantial question of law referred above, is decided against the appellant and in favour of the respondents.

8. No other point was urged.

9. The result of the above discussion, the appeal fails and is accordingly dismissed with no order as to costs.