

(1985) 11 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 8 of 1974

State of Himachal Pradesh

APPELLANT

Vs

Maghinder Dutt and Others

RESPONDENT

Date of Decision : 07-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Evidence Act, 1872 — Section 90

Mandi Land Revenue Regulation, 1975 — Section 20

Citation : (1985) 14 ILR HP 846

Hon'ble Judges : V.P. Gupta, J;H.S. Thakur, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Dishender Khanna and M. L. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—This Letters Patent Appeal is directed against the decree and judgment of a learned single Judge of this Court dated 16-7-1973, whereby the decree and judgment passed by the first appellate Court was reversed.

2. The relevant facts to decide this appeal may be stated.

3. The Respondent (hereinafter to be referred to as the Plaintiff) filed a suit against the Appellant (hereinafter to be referred to as the Defendant) for a declaration that the land comprised in Khasra No. 1Jadeed and Khasra No. 2 Jadeed measuring 88-10-12 bighas situate in Village Thansi, Illaqua Balindi-Sanor, Tehsil Sadar, District Mandi, is owned by him and was previously owned and possessed by his ancestors commencing from the time of his great grandfather Purohit Shivu to whom the said land was granted as a "Sasin" (religious grant including assignment of land revenue) by late H. H. Raja Zalam Sen Ruler of the erstwhile Mandi State in the year 9 Kham, i.e. about 127 years ago. It was contended by the Plaintiff that he and his ancestors had been in peaceful enjoyment of the land and its produce. It was further stated that the

Forest Department, Mandi Forest Division, without any legal justification had dissuaded and stopped the Plaintiff from cutting fuel wood from the said land and thereby the Department is preventing him from exercising his rights in the land in suit. The Plaintiff served a notice u/s 80 CPC but no reply to the same was given. Consequently, the Plaintiff filed the suit.

4. It may be noticed that the Defendant resisted the suit on numerous grounds but in the appeal before the learned single Judge and also before us the learned Counsel for the Appellant pressed only issues No. 5 and 6. The same may be reproduced for a ready reference:

5. Whether the Plaintiff is the owner of the land in suit as set out in the plaint ?

6. Whether the Plaintiff and prior to him his ancestors have been in possession of the land in suit and the Plaintiff continued to be in possession of it uptill now?

5. The trial Court while deciding these issues together found that the Plaintiff was the owner of the suit land and was in its possession. The trial Court consequently passed a declaratory decree in favour of the Plaintiff and against the Defendant to the effect that the land in suit and its produce including trees thereon is owned by the Plaintiff and directed the Defendant not to interfere in any manner in the Plaintiff's exercise of rights of ownership in the land in suit.

6. The Defendant preferred an appeal before the learned District Judge, Mandi. The learned District Judge after considering the matter held as under:

The findings of the learned lower Court that the Plaintiff is the owner of the land and had been in its continuous possession are absolutely wrong. The title-deed on which the Plaintiff relies is Santha Ex. PA and that Santha does not give him any absolute right of ownership or possession in the land. As such the findings of the learned lower Court are erroneous and liable to be set aside. The Plaintiff has only the right of user, i.e. Bartandari rights and not of ownership.

7. Aggrieved by the aforesaid judgment of the learned District Judge, the Plaintiff preferred a second appeal which was allowed by the learned single Judge of this Court. The learned single Judge after considering the evidence on record, including the "Santha" Ex. PA, set aside the judgment of the learned District Judge and allowed the appeal of the Plaintiff.

8. Aggrieved by the judgment of the learned single Judge, the Defendant has preferred this Letters Patent Appeal.

9. It is contended by Shri K.D. Sood, learned Counsel for the Appellant, that the "Santha" Ex. PA which is the basis of the suit has not been legally proved. It is emphasised by him that neither the scribe of this document nor any other witness has been produced to establish the authenticity of this document. According to him, though the said "Santha" was executed long time back but the necessary ingredients of Section 90 of the Evidence Act have not been established. It is further asserted that even under the said document the

ownership rights in the land in dispute have not been conferred on the ancestor of the Plaintiff but as held by the learned District Judge he was given only easementary rights. Consequently, it is asserted by the learned Counsel that the Plaintiff cannot have better rights than those given to his ancestor. On the contrary, it is contended by Shri Dishender Khanna vice Shri M.L. Sharma, Advocate, that the "Santha" Ex. PA is the original "Santha" which was executed long time back and all rights in the land in suit were conferred on Purohit Shivu the ancestor of the Plaintiff. He has contended that the area has been fully described in the "Santha" and the identity of the land in suit is fully established.

10. We have heard the learned Counsel for the parties at length and have also perused the evidence on record.

11. It may be pointed out that the "Santha" as defined in the Mandi Land Revenue Regulation, 1875 means "any instrument executed by the Darbar whereby the right of a Malguzar or Muafidar are created, affirmed, renewed, extended, restricted or extinguished." As such, this "Santha" is an instrument by which these rights are created. The Plaintiff claims that the land was granted as a "Sasin" to Purohit Shivu the great grandfather of the Plaintiff. "Sasin" as defined u/s 20 of the Mandi Land Revenue Regulation, 1875, means "religious grant bestowed in perpetuity on Brahmans, diviners and other persons engaged in religious duties, or in the name of religious institutions on conditions specified in their Santhas". It may be noticed that the "Santha" Ex. PA has two Articles. The original "Santha" is written in Mandiali and its translation is Ex. PA/1. At the top of this "Santha" it is written that "Sansa Ra Santha Pro. Shivu Jo", which means the instrument of religious grant to Purohit Shivu. The first part of Ex. PA "Santha" relates to the land in which 15 Bhars of seed could be sown and which was lying vacant and this area was granted to Purohit Shivu from Sambat 9, Parvishthe Magh 28 by way of "Sankalpa", that is, absolutely. The latter part of "Santha" relates to the grant of the land which is described at the back of the foot-path of Sil and below the beer tree in Manjhli Thansi and on this side of Palni Dhar Nattah. This land is said to be "Ban", "Jati", "Booti" including the bushes etc., Khal (Khalyan), Khetar (cultivated land) and the Pat (Pasture land) which was previously with one Bartu and it had been granted to Shivu on the same condition. The learned District Judge has translated the relevant portion of "Santha" as under:

Behind this land, the house and site thereof, the path, trees and bushes standing thereon, the grass land behind the path of Silha and below the Beer tree of Manjhli Thansi up to the stream of Palni Dhar shall be used by Shivu, as Bartu had been using it (Barti Ri). Shivu Purohit should pray for our victory (long life and welfare). This "sasin" has been bestowed without any hinderance. The services rendered by the tenants of this village are also conferred to Shivu. No personal assistance shall be rendered. This is our gift.

It is not the condition of this "Santha" that in the event of the breach of any condition of the same, the grant could be revoked. In fact, in terms of the

"Santha" it was essentially a gift which is not revocable. The learned single Judge has referred to Punjab Gazetteers Mandi State (Vol. XII-A) of 1920 and has extracted relevant statement therefrom as contained at page 75 of the said Gazetteer. The same may be reproduced for a ready reference:

The majority of Sansans, however, are held by Brah-mans, most of whom perform priestly functions only, but some of whom are also engaged in agriculture. The grants are almost invariably in perpetuity and some are "Siumparman" without limit or boundary. There are several villages in which the Rajas would not take even a drink of water lest they should incur guilt by enjoying what they had gifted irrevocably.

12. We are of the view that this was a grant in the form of "Siumparman". In the "Santha" Ex. PA, also the use of the words. "Jihan Bartue siumparman Barti Ri, Tihan Hun Purohit Shivu Bartni" indicate that it was a gift to Purohit Shivu which was irrevocable and this land was definitely given as a "Sasin" which according to the history in the Gazetteer is a grant made almost invariably in perpetuity and without limit or boundary. The very meaning of the "Sasin" is a grant created for a religious purpose and such grants are invariably in perpetuity. It is found by the learned trial Court that the land in dispute has been in possession of the Plaintiff from the time of his ancestors. He has also found that the Plaintiff is the owner of the land in suit. The learned District Judge while disposing of the appeal has not observed that the Plaintiff or his ancestors had no rights at all in the land in dispute. He has recognized the ease-mentary rights (Bartandari) in favour of the Plaintiff. The learned single Judge after considering the respective contentions of the parties and the evidence on record has arrived at a positive conclusion that the Plaintiff is the absolute owner with possession of the land in suit. The identity of the land in suit has been established by the map Ex. PD, prepared by Patwari. This Ex. PD has been also proved as correct by Shri Inder Singh PW. This witness has also stated that in the register of "Muafiat" there is a mention of "Santha" Ex. PA pertaining to the land in suit.

13. We may now consider the contention of the learned Counsel for the Appellant whether Ex. PA "Santha" has been legally proved or not in terms of Section 90 of the Evidence Act. It cannot be disputed that "Santha" Ex. PA was executed about 127 years before the suit was filed. It is also not disputed that Ex. PA was produced by the Plaintiff and it was in his custody. This document came from a proper custody and was definitely more than 30 years old. It is an established law that in the normal circumstances where it is found that the document in question emanates from an apparently lawful custody and where the document is such that it is likely to have been executed having regard to the common course of conduct and where there are no circumstances to excite the suspicion of the Court, the transaction will draw the presumption u/s 90 of the Evidence Act. Otherwise also, a document which is more than 30 years old can be read in evidence without having been formally proved. It is not disputed that the grant on the basis of Ex. PA "Santha" has been in operation for a long series of years.

It may be noticed that His Highness Raja Zalam Sen who made the grant in favour of Shivu Purohit is not in the land of living. Similarly, the scribe of the said document is also not alive. As such, it is impossible to adduce direct evidence in respect of the "Santha" Ex. PA. In this case, it is impossible to obtain the testimony of such witnesses who could prove the signatures or the writing of the document. There is no element of suspicion contained in the document Ex. PA regarding its authenticity. While the authenticity of Ex. PA stands established, it has to be concluded that the land in dispute was gifted to Shivu Purohit by the Ruler of Mandi State, which is irrevocable. The learned single Judge has minutely considered this aspect of the matter and has rightly observed that the land in dispute was gifted to the Plaintiff and the same was irrevocable. At the same time, the learned single Judge has found that the Plaintiff is in possession of the land in dispute.

14. The result of the above discussion is that this appeal has no force and is hereby dismissed with costs.