

(2019) 11 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 93 Of 2007

Surjeet Singh

APPELLANT

Vs

Yashwant Singh (Since Deceased) Through His Legal Heirs

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Citation : (2019) 11 SHI CK 0038

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Rajesh Mandhotra, Romesh Verma

Judgement

Sureshwar Thakur, J

1. The learned trial Court, upon, Civil Suit No. RBT/382/98/1993, hence, rendered a verdict decreeing, vis-a-vis, the plaintiff, the espoused relief of permanent prohibitory injunction, wherethererough, the defendants, were restrained, from, interfering in the peaceful possession, of, the plaintiff, vis-a-vis, the suit khasra number, and, also the defendants were restrained, from, raising any construction, over, the suit land. The plaintiff becoming aggrieved therefrom, given, his becoming denied the relief, of, mandatory injunction, hence, appertaining, to, the, dismantling, of, the construction erected, upon, the suit khasra number, hence, instituted, a, civil appeal, before the learned first appellate, (i) and, upon, the afore apposite appeal, the learned first appellate court, after allowing the plaintiff's appeal, proceeded, to, in addition to the relief, of, permanent prohibitory injunction, as, initially accorded, hence, by the learned trial Court, also granted, vis-a-vis, him, the, relief of mandatory injunction.

2. The defendant becoming aggrieved therefrom, his, for striving to beget reversal, of, the verdict pronounced against him, by both, the learned courts below, hence, has instituted, the, instant regular second appeal before this Court.

3. When the appeal came up for admission, this Court, on 07.09.2007, admitted the appeal instituted, by, the defendant/appellant, against, the judgment and

decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial questions of law:-

1. Whether the findings of the Ld. First Appellate Court while discarding the material evidence on record is sustainable in the eyes of law?
2. Whether the demarcation report Ex.PW3/A is report which can be relied upon and acted upon by the Civil Court especially in view of the finding that the same has been obtained not in consonance with guidelines/rules framed by the learned Financial Commissioner?
3. Whether the learned first Appellate Court being the last Court on the findings of facts is right in ignoring the material evidence especially statement of the plaintiff while deciding the appeal?

Substantial questions of Law No.1 to 3:

4. Both the learned courts below in making a conclusion, (a) vis-a-vis, the defendants making encroachments, upon, the suit khasra numbers, khasra numbers whereof, are, contiguous to the adjoining thereto estate, of, the defendants, had meted, reliance to the report, of, the demarcating officer concerned, as, embodied in Ex.PW3/A. Even though, the plaintiff had signatured, the, apt statement made before the demarcating officer, and, had, thereupon accepted the demarcation, as, conducted by the demarcating officer. However, the defendants had disconcurred, with the demarcation, as carried, of, the apt contiguous estates, of, the contesting litigants concerned, hence, by the demarcating officer. The foisting of validity, by both, the learned courts below, through, their concurrent verdicts, vis-a-vis, Ex.PW3/A, appears to be a sequel of gross overlookings by each, of, the testification, occurring in the cross-examination of PW-3, the, author of Ex.PW3/A, (b) echoings whereof explicitly pronounce, vis-a-vis, at the relevant time, his not carrying, either the original musabi or, the, certified copy thereof hence with him, (c) and, when the demarcating officer, could only, hold a valid demarcation, of, the apposite contiguous estates, of, the contesting litigants, (d) only, upon his at the relevant time, hence holding either the original of the musabi or certified copy thereof, (e) whereas, his not holding either, at the relevant time, nor his prior to his conducting, the, demarcation, of, the contiguous estates, of, the contesting litigants, hence, through their signatured statements, evincing, their consent, vis-a-vis, the fixed points, wherefrom, rather he could, dehors, the afore lacks, rather validly carry demarcation, of, the contiguous estates of the contesting litigants. (f) Significantly, hence for, the afore evident wants, and, further when the fixed points also remained unascertained, imperatively, from, the relevant original musabi or from the certified copy thereof, whereas, for, the, commencement, of, a valid demarcation, rather the demarcating officer, is, enjoined, to, ensure, the, ascertainment therefrom, of, the fixed point(s), wherefrom, he, was to commence apt demarcation(s), (g) thereupon, all the afore infirmities, render Ex.PW3/A to not hold, any vigour, and, placing, of,

reliances, upon, it by both the learned courts below, is, legally inapt.

5. Be that as it may, the learned counsel appearing for the aggrieved respondent/plaintiff, submits that even, if, the afore infirmity, has, surfaced, (a) yet, for, permanently terminating the lis, this court, may proceed, to, order for appointment, of, a local commissioner, to, demarcate the contiguous estates, of, the contesting litigants. However, the submission is not acceptable, as, the plaintiff in his cross-examination, has, made echoings, vis-a-vis, at the relevant time, and, over the suit land, no construction, of, the proposed/protested stair case, and, at the instance, of, the defendants rather occurring, rather his deposing, that, the defendants had only collected the material, for, thereafter, theirs raising, the, proposed/protested stair case, upon, the suit land, hence, owned, and, possessed, by, them. Reiteratedly, the afore admission also estops, the, learned counsel for the plaintiff/respondent, to, make, the, afore submission before this Court.

6. Be that as it may, even though, this court declines to the plaintiff, the, relief, of, mandatory injunction. However, with the defendants, as, uncontestedly deposed by PW-1, in his, cross-examination rather collecting, the, requisite construction material, at the relevant site, and, therethrough, hence evince their intention, to, raise construction, of, a stair case, upon, the suit land (i) and, when hence the plaintiff nurses a valid apprehension, qua his right(s), title or interest, vis-a-vis, the suit khasra numbers, becoming usurped, by the defendants, hence, only the relief, of, permanent prohibitory injunction, hence restraining, the, defendants, from, making constructions, upon, the suit khasra numbers, is granted, vis-a-vis, plaintiff/respondents.

7. The above discussion, unfolds, that the conclusions as arrived by the learned first Appellate Court being not based, upon a proper and mature appreciation of evidence on record. While rendering the findings, the learned first Appellate Court has excluded germane and apposite material from consideration. The substantial questions of law are answered accordingly.

8. In sequel, in the larger interest, of, justice, and, for obviating re-emergence, of, litigation, inter se, the, contesting litigants, vis-a-vis, the suit land, the judgment, and, decree rendered by the learned first Appellate Court, is, modified in the afore manner, whereas, the judgment, and, decree rendered by learned Sub Judge, 1st Class, Barsar, upon, Civil Suit No. RBT/382/98/93 is affirmed, and, maintained. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs.