

(2019) 11 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 287 Of 2019

Union Of India

APPELLANT

Vs

Madan Singh Pundir And Another

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80, 100, Order 41 Rule 27
Himachal Pradesh Tenancy And Land Reforms Act, 1972 — Section 104(9)
Constitution Of India, 1950 — Article 295

Citation : (2019) 11 SHI CK 0023

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Rajinder Thakur, Anil Tomar

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Instant Regular Second Appeal under S.100 CPC, lays challenge to judgment and decree dated 31.5.2017 passed by learned District Judge, Sirmaur at Nahan, HP in Civil Appeal No. 53 -CA/13 of 2016, affirming judgment and decree dated 25.9.2013 passed by learned Civil Judge (Junior Division), Sirmaur at Nahan, HP, in Civil Suit No. 73/1 of 2011, whereby suit for perpetual prohibitory injunction having been filed by respondent No.1-plaintiff (hereinafter, 'plaintiff') came to be partly decreed.

2. Precisely, the facts as emerge from the record are that the plaintiff filed a suit for perpetual prohibitory injunction against the appellant-defendant No.1 (hereafter, 'defendant') and proforma respondent No.2-defendant No.2, in the court of learned Civil Judge (Junior Division), Sirmaur at Nahan, Himachal Pradesh, averring therein that he is exclusive owner-in-possession of the land bearing Khewat/Khatauni No. 144/188, Khasra No. 1639/515, measuring 00-01-40 Hectares, situate in revenue estate Chhawani Shamsheerpur, Pargana Pahar, Tehsil Nahan, District Sirmaur, Himachal Pradesh as incorporated in

Jamabandi for the years 2006-07 (hereinafter, 'suit land'). Plaintiff further averred in the plaint that he purchased suit land vide registered sale deed dated 24.2.2006 from one Rashid Beg. Plaintiff averred that he alongwith other inhabitants of Shamsherpur Chhawani uses the PWD road, which passes through Army area and connects several villages. Plaintiff further averred that he intended to construct his residential house in the suit land and for that purpose, he had submitted a building plan for approval to the Municipal Council, Nahan as the suit land falls in Ward No. 12 of Nahan Town. Building plan was approved by Municipal Council, Nahan on 7.1.2010. Since no order on the applications filed by the plaintiff through his wife, dated 28.1.2011 and 21.3.2011, seeking therein permission to carry construction material to the suit land, was passed, plaintiff served the defendants with legal notice under S.80 CPC on 23.3.2011, but despite that no permission was granted to the plaintiff to carry construction material to the suit land.

3. Defendants, by way of written statement, claimed that the plaintiff is not the owner-in-possession of the suit land, rather, suit land belongs to Ministry of Defence, Government of India. Defendants further averred in the written statement that the Station Commander, Nahan, vide letter No. 1268/2/SHQ dated 9.2.2011 confirmed that the suit land is a military area. As per defendants, suit land is erstwhile Ex-state Forces land, which was transferred to Government of India, Ministry of Defence vide letter No. F.14(61)-49 dated 16.1.1950. Defendants claimed that the suit land is in possession of Ministry of Defence since May, 1954 and same was transferred to Government of India, Ministry of Defence, as per Art.295 of the Constitution of India. Defendants specifically denied the allegations of the plaintiff that any interference is being caused in the suit land by them.

4. On the basis of aforesaid pleadings adduced on record by respective parties, learned trial Court framed following issues for determination on 21.12.2011:

- "1) Whether the plaintiff is exclusive owner in possession of the suit land? ...OPP
- 2) Whether the defendants without right, title and interest interfering in the suit land in construction activities and also obstructing the plaintiff from carrying out building material through R.P. Post.? OPP
- 3) If issues No. 1 and 2 are proved in affirmative, whether the plaintiff is entitled to the relief of permanent prohibitory injunction as prayed for? OPP
- 4) Whether the plaintiff is having no locus standi to file the present suit? OPD"

5. Trial Court, on the basis of the evidence having been led on record by the respective parties, partly decreed the suit filed by the plaintiff and passed a decree of permanent prohibitory injunction against the defendants, restraining them from causing interference, if any, in the suit land.

6. Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by learned trial Court, defendants preferred an appeal before learned

District Judge, Sirmaur at Nahan, which also came to be dismissed vide judgment and decree dated 31.5.2017, as a consequence of which, judgment and decree passed by learned trial Court came to be upheld. In the aforesaid background, defendant No.1 has approached this court in the instant proceedings, praying therein for dismissal of the suit filed by plaintiff after setting aside judgments and decrees passed by both the learned Courts below.

7. Instant Regular Second Appeal came to be admitted by this Court on 24.6.2019, on the following substantial questions of law:

"1. Whether both the learned Courts below have misread, misconstrued and misinterpreted the oral as well as documentary evidence of the parties, which has materially prejudiced the case of the appellants?

2. Whether the land belongs to Govt. of India can be transferred to the tenants on the strength of the H.P. Tenancy and Land Reforms Act, particularly in view of amendment in the year 1987 to the Act, which has been given retrospective operation and has been upheld by the Hon'ble High Court of Himachal Pradesh?

3. Whether any proprietary rights can be conferred upon the tenants on Government Land?"

8. Since all the substantial questions of law are interconnected, as such, to avoid repetition of discussion of evidence, same are being taken up together for determination.

9. Before advertng to the factual matrix of the case, it may be noticed that the judgment passed by trial Court dated 25.9.2013, in Civil Suit No. 73/1 of 2011 stands duly accepted by the plaintiff, because, no appeal whatsoever, ever came to be filed on his behalf, laying therein challenge to the findings returned by learned trial Court qua issue No.2, which was partly decided against him. Careful perusal of judgment and decree rendered by learned trial Court reveals that the suit of the plaintiff was decreed partly, whereby question with regard to title was not gone into, rather, trial court restricted itself to the relief of injunction, as was prayed for by the plaintiff.

10. Since learned trial Court vide judgment and decree dated 25.9.2013, did not touch the issue of ownership of the plaintiff qua the suit land, there appears to be no necessity for this Court to go into that aspect of the matter, rather, in the present appeal, this Court is only required to ascertain the correctness of the findings returned by learned Courts below with regard to relief of injunction prayed for by the plaintiff by way of suit for permanent prohibitory injunction.

11. I have heard learned counsel for the parties and carefully perused the material available on record.

12. Having heard learned counsel for the parties and perused the material available on record, vis-à-vis reasoning assigned by learned Courts below, while partly decreeing the suit of the plaintiff, this court is not in agreement with Mr.

Rajinder Thakur, learned Central Government Counsel, that learned Courts below have failed to appreciate the evidence in its right perspective, rather, this Court finds that though the defendants claimed themselves to be owner of the property in question but failed to place on record any cogent and convincing evidence with regard to ownership. To the contrary, plaintiff successfully proved on record by producing and proving Jamabandi for the years 2006-07 and sale deed that he is owner-in-possession of the suit land. With a view to prove his ownership on the suit land, plaintiff Madan Singh tendered his evidence by way of affidavit, Ext. PW-1/A, Jamabandi for the years 2006-07, Ext. PW-1/B and Tatima Shajra, Ext. PW-1/C. This witness in his cross-examination categorically stated that he purchased the suit land from one Rashid Beg on 24.2.2006. This witness also stated that he is owner-in-possession of the suit land and intended to construct his residential house in the aforesaid land. Bare perusal of Ext. PW-1/B i.e. Jamabandi for the years 2006 -07 clearly reveals that the plaintiff is recorded as owner -in-possession of the suit land. Presumption of truth is attached to the revenue record and definitely burden, if any, was upon the defendants to rebut such presumption by leading cogent and convincing evidence but, as has been taken note herein above, no evidence, worth the name, has been led on record by the defendants that the Union of India is the exclusive owner in possession of the suit land. Though, DW-1, Pradeep Kaundal, SDO, serving with Defence Estate Officer, Ambala, tendered his evidence by way of an affidavit, Ext. DW-1/A and a copy of Authority Letter, Ext. DW-1/B, in evidence, but he was not able to place on record documents suggestive of the fact that the defendant-Union of India is the exclusive owner-in-possession of the suit land. This witness though deposed that the suit land was transferred to Government of India, Ministry of Defence vide letter No. F.14(61)-49, dated 16.1.1950 and it is in continuous possession of Ministry of Defence since May, 1954, but in support of aforesaid deposition/ contention, no documentary evidence ever came to be led on record.

13. Leaving everything aside, defendants were unable to dispute the sale deed, if any, in favour of the plaintiff, executed by Rashid Beg, though defendants claimed that said document was a fictitious document. This Court finds no error in the findings of the learned Courts below that being dissatisfied, if any, with the execution of aforesaid sale deed, defendants ought to have obtained declaration that the sale deed executed by Rashid Beg in favour of the plaintiff is fictitious document and cannot be relied upon.

14. Plaintiff also proved on record that prior to filing of the suit, he had filed applications seeking permission to carry building material through RP Post, Ext. PW-1/K after Building Plan, Ext. PW-1/G was approved by Municipal Council, Nahan vide Ext. PW-1/H. Careful perusal of aforesaid documents clearly reveals that the plaintiff before starting the construction, got the Building Plan approved from Municipal Council, Nahan. This Court cannot lose sight of the fact that the Building Plan could not have been approved by the Municipal Council, Nahan, if the plaintiff was not found to be the owner-in-possession of the suit land, rather, this Court has reason to presume that the Municipal Council, Nahan proceeded to

approve the Plan on the basis of revenue record.

15. Plaintiff also proved on record that he had issued legal notice under S.80 CPC, Ext. PW-1/D through registered postal receipts, Exts. PW-1/E and PW-1/E1 alongwith acknowledgements, Exts. PW-1/F1 and PW-1/F2, perusal whereof clearly reveals that the defendants were duly apprised by the plaintiff with regard to inconvenience being caused to him in carrying the construction material to the suit land. Though, DW-1 feigned ignorance with regard to the filing of applications by the wife of the plaintiff, but he did not deny that the inhabitants of the area were being stopped at R.P. Gate, Nahan, and plaintiff was not allowed to carry construction material to the suit land. It can be safely inferred from a close reading of the statement made by DW-1 that the plaintiff was not allowed to carry construction material beyond RP Post near Kacha Tank, Nahan, as such, plaintiff was well within his right to file suit for permanent prohibitory injunction, seeking restraint order against the defendants.

16. Leaving everything aside, allegations with regard to causing obstruction, stand otherwise proved in view of categorical stand taken by the defendants in their written statement that the Union of India is exclusive owner-in-possession of the suit land and plaintiff has no right, title or interest over the suit land. Since the defendants specifically disputed the title of the plaintiff, learned Courts below rightly arrived at a conclusion that the aforesaid conduct of the defendants amounts to interference, especially when the revenue record depicts the plaintiff to be owner-in-possession of the suit land.

17. Interestingly, a close scrutiny of the cross-examination conducted upon DW-1 by the plaintiff reveals that a specific suggestion was put to him that the plaintiff has constructed his house over the suit land. DW-1 has nowhere disputed the factum with regard to construction of the house over the suit land, which admission on his part clearly establishes on record that the plaintiff had been raising construction on the suit land for quite considerable time but subsequently, on a few occasions, vehicles carrying construction material were stopped by Army personnel posted at RP post, Kacha Tank.

18. Hence, having carefully perused the evidence, be it ocular or documentary, led on record by the respective parties, this Court is not in agreement with learned Central Government Counsel that learned Courts below misread the documentary and oral evidence led on record by respective parties, rather, this Court is fully convinced that learned Courts below have read the evidence in its right perspective and arrived at just conclusions.

19. Substantial question of law No.1 is answered accordingly.

20. As has been noticed herein above, that though the defendants claimed that the suit land belongs to Government of India and same could not be transferred to tenants under Himachal Pradesh Tenancy and Land Reforms Act, but no evidence worth the name has been led on record by defendants to prove that Union of India is owner-in-possession of the suit land. Since defendants have

miserably failed to prove that the Union of India is the sole owner of the suit land, substantial question of law No. 2 is not relevant, so far adjudication of present case is concerned, because, admittedly, question with regard to transfer of land to tenants on the strength of HP Tenancy and Land Reforms Act, that too at the behest of defendants -Union of India cannot be gone into till the time it is proved on record that the Union of India is the owner-in-possession of the suit land.

21. Similarly, this Court sees no error in the finding returned by learned first appellate Court while rejecting application under Order XLI, rule 27 CPC, by way of which, defendants intended to place on record copy of mutation No. 152, dated 23.4.1976, vide which a right under S.104(9) of HP Tenancy and Land Reforms Act came to be conferred upon the plaintiff, copy of mutation No. 204, dated 18.3.2006, Jamabandi for the years 2006-07 and Notification No. F.14(61)-49, dated 16.1.1950 of Government of India, Ministry of Estate as well as Government of Himachal Pradesh, whereby land was transferred to the Union of India for the purpose of establishment of cantonment area. Defendants have been not able to prove on record that the documents intended to be placed on record by way of additional evidence, were not in existence at the time of filing of written statement as such, court below rightly rejected the application. Leaving everything aside, DW-1, in his cross-examination, admitted that he is not aware whether the documents intended to be placed on record, were ever acted upon or not? No doubt, perusal of a few of aforesaid documents suggests that a decision was taken to transfer land in favour of Union of India, but in these documents, there is no description, if any, with regard to land proposed to be transferred in the name of Government of India. To the contrary, there is positive evidence, in the shape of revenue record placed on record by the plaintiff suggestive of the fact that he is owner-in-possession of the suit land.

22. If the aforesaid documents, intended to placed on record are read in their entirety, this Court is in agreement with the findings returned by learned Courts below that same are favourable to the plaintiff and not to the defendants, as such, no fruitful purpose would have been served by taking these documents on record.

23. Substantial questions of law Nos. 2 and 3 are answered accordingly.

24. Now, it would be appropriate to deal with the specific objection raised by the learned counsel representing the plaintiff with regard to maintainability and jurisdiction of this Court, while examining concurrent findings returned by both the Courts below. Learned counsel for the plaintiff, invited the attention of this Court to the judgment passed by Hon'ble Apex Court in Laxmidevamma and Others vs. Ranganath and Others, (2015)4 SCC 264, wherein the Hon'ble Supreme Court has held:

"16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that the plaintiffs have established their right

in A schedule property. In the light of the concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for reappreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the A schedule property for road and that she could not have full-fledged right and on that premise proceeded to hold that declaration to the plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained." (p.269)

25. Perusal of the judgment, referred hereinabove, suggests that in exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. There can be no quarrel (dispute) with regard to aforesaid observation made by the Court and true it is that in normal circumstances High Courts, while exercising powers under Section 100 CPC, are restrained from re-appreciating the evidence available on record.

26. The Hon'ble Apex Court in *Parminder Singh versus Gurpreet Singh*, Civil Appeal No. 3612 of 2009, decided on 25.7.2017, has held as under:

"14) In our considered opinion, the findings recorded by the three courts on facts, which are based on appreciation of evidence undertaken by the three Courts, are essentially in the nature of concurrent findings of fact and, therefore, such findings are binding on this Court. Indeed, such findings were equally binding on the High Court while hearing the second appeal.

27. It is quite apparent from aforesaid exposition of law that concurrent findings of facts and law recorded by both the learned Courts below can not be interfered with unless same are found to be perverse to the extent that no judicial person could ever record such findings. In the case at hand, as has been discussed in detail, there is no perversity as such in the impugned judgments and decrees passed by learned Courts below, rather same are based upon correct appreciation of evidence as such, deserve to be upheld.

28. Consequently, in view of detailed discussion made herein above, I find no merit in the appeal at hand, which is accordingly dismissed. Judgments and decrees passed by both the learned Courts below are upheld.

29. However, before parting with the judgment, this Court wishes to observe that since the suit land falls within the Cantonment area, Army Authorities responsible for the security of the Cantonment area are not estopped from checking the vehicles entering the Cantonment area or carrying construction material to the site of the plaintiff or any other resident of the area, for security purposes.

Pending applications, if any, are disposed of. Interim directions, if any, are

vacated.