

(2009) 11 SHI CK 0013
In the High Court Of Himachal Pradesh

Usha and Others	Vs	APPELLANT
Bhagat Ram Bhagat Ram Vs Usha Verma and Others		RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Citation : (2009) 3 ShimLC 60

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Both these appeals are being disposed of by a common judgment as they relate to the same parties and the same property. The decision in one appeal would necessarily affect the judgment in the other appeal.

2. In RSA 483 of 2007, the plaintiff has challenged the judgment and decree of the learned District Judge (Forest) Shimla reversing the judgment and decree passed by the learned trial Court granting the relief of permanent prohibitory injunction restraining the defendants/respondents from interfering in the possession of the plaintiff over the suit land as described in the plaint.

3. The appeal was admitted on substantial questions of law 2 and 4, which read:

2. Whether the well reasoned judgment and decree passed by the learned trial Court has been ignored by the learned District Judge (Forest), Shimla and he having failed to consider, discuss and appreciate the findings of the learned trial Court, therefore, the findings recorded by the learned District (Forest) Shimla, are vitiated?

4. Whether the learned District Judge below has failed to consider pleadings as well as oral and documentary evidence on record and, therefore, findings recorded by him are liable to be set aside?

4. These questions need not detain this Court any further as I find from the judgment of the learned appellate Court that there is hardly any consideration of the grounds of appeal raised nor is there any critical examination of the

evidence, oral and documentary, on record in order to arrive at a particular conclusion. The learned appellate Court merely mentions the submissions made by the Counsel and then proceeded to accept the appeal straightway. This is not a satisfactory manner of disposing of an appeal. It is by now well settled that the first appellate Court is duty bound to make a critical analysis of the case before it and cannot mechanically record, affirm or reject the findings of the trial Court. It is duty bound to discuss the merits of the contentions raised by the appellant and to deal with all issues of fact and law. (See *United India Insurance Co. Ltd. v. Kanwal Nain Sachdeva and Ors.*, (1999) 9 SCC 193 *State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., and Madhukar and Others Vs. Sangram and Others*,

5. I do not wish to enter into the merits of the case as urged by the learned Counsel appearing for the parties. Suffice it to say that I do not find any analysis of the evidence nor any reasoning for the conclusion. The appeal is accordingly allowed. The judgment of the learned District Judge (Forest) is set aside and the case remanded for decision afresh in accordance with law.

6. In RSA 425 of 2009, the defendant has assailed the judgment and decree of the learned appellate Court affirming the judgment and decree of the learned trial Court. However, since the identity of the land is common and the claim of the parties would be in conflict with each other in case both the cases are not decided together, this case is also remanded to the learned District Judge for decision afresh.

7. A direction is issued that both these cases shall be clubbed and tried together on the pleadings and evidence on record and the learned Court will come to its own conclusions, totally uninfluenced by any observations made by this Court. Parties are directed to appear before the learned District Judge on 30.11.2009. Both the cases will be heard and disposed of by the learned District Judge not later than 31.3.2010. Both the appeals are disposed of accordingly. There shall be no order as to costs. All pending applications shall stand disposed of.