
(2010) 11 SHI CK 0166
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 644 of 2009

Uttam Chand

APPELLANT

Vs

Pathanu Ram and Another

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 11 SHI CK 0166

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this petition the petitioner has laid challenge to the Judgment dated 10.07.2009 passed by the learned District Judge, Kangra at Dharamshala, whereby he allowed the appeal of the plaintiff-appellant and set-aside the Judgment of the learned trial Court whereby the suit of the plaintiff had been dismissed on the ground that the same was time barred.

2. The undisputed facts are that the respondent Uttam Chand had earlier filed a suit being titled as Uttam Chand v. Pathanu Civil Suit No. 12 of 1999 in which it was prayed that defendant Pathanu be restrained from cutting trees from the suit land. Pathanu contested the suit and stated that he had cut the tree in his own land. Uttam Chand while appearing in the witness box stated that defendant had threatened to cut the tree in the year 1999 and despite stay orders from the Court passed in the month of February, 1999 Pathanu had cut a tree from the suit land which was still lying there. It would be pertinent to mention that this suit filed by Uttam Chand was dismissed vide Judgment and decree Ext.P-3 and Ext.P-4, respectively.

3. Thereafter, Pathanu filed another Civil Suit No. 35 of 2005 which has given rise to the present petition. The claim of Pathanu was that though the tree had been cut by him, later Uttam Chand and his father Munshi Ram (defendants) removed

the wood of the Tuhni tree and therefore, caused a loss of Rs. 15,000/- to him. It would be pertinent to mention that the present petitioner Uttam Chand who was defendant, alongwith his father Munshi Ram, did not deny the fact that they had removed the cut wood of Tuhni tree but according to them this tree was standing over their own land. The learned trial Court dismissed the suit and one grounds for dismissal of the suit was that the suit was barred by limitation. According to the learned trial Court, the cause of action arose in favour of the plaintiff in February, 1999. He also held that there is no material on record which would show that Pathanu was in fact restrained by the learned Sub Judge by way of injunctive order to remove the Tuhni tree.

4. Aggrieved by the Judgment and decree Pathanu filed the appeal before the learned District Judge, Dharamshala, who allowed the same by the impugned Judgment. The learned lower Appellate Court came to the conclusion that the suit was within limitation on the ground that the cause of action arose in favour of the plaintiff only when the demarcation was conducted.

5. Since the value of the suit is less than 25,000/- no second appeal is maintainable and the present petition has been filed in which the ground is that the suit could not have been decreed since the same has been filed beyond the period of limitation. In proceedings under Article 227 of the Constitution of India, this Court cannot act as an Appellate Court and only legal issues can be gone into so the only question being looked into is whether the suit is within limitation which is a mixed question of law and facts. However, I do find that the learned trial Court was wrong in holding that there was no material on record to show that there was no restraint order against Pathanu. A perusal of the Judgment Ext.P-3 clearly shows that even at the time when Uttam Chand made a statement in the earlier suit he clearly stated that his case was that despite restraint orders Pathanu had cut the tree and the wood was still lying on the ground. Therefore, this portion of the order of the learned trial Court is totally wrong. It is more than apparent that the cause of action in favour of Pathanu would arise only when the wood of the tree was removed. The question what was the date when the wood was removed is a pure question of fact and this Court cannot interfere in the same in proceedings under Article 227 of the Constitution of India. Therefore, I find no merit in the petition, which is dismissed accordingly. No costs.