
(2010) 11 SHI CK 0337

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 160 of 2000

Vinod Kumar and Others

APPELLANT

Vs

Chuni Lal

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17, 100

Citation : (2010) 11 SHI CK 0337

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This Regular Second Appeal u/s 100 CPC has been filed by the appellants/defendants against the judgment and decree of the Court of learned Additional District Judge (I), Kangra at Dharamshala, dated 11.11.1999, affirming the judgment and decree passed by the Court of learned Sub Judge Ist Class(2), Palampur, dated 31.10.1997, decreeing the suit of the respondent/plaintiff for permanent prohibitory injunction as against the appellants.

2. Briefly stated, the facts of the case are that suit for permanent prohibitory injunction was filed by the respondent, hereinafter also referred to as the plaintiff as against the appellants hereinafter also referred to as the defendants. It was alleged by the plaintiff that the suit land measuring 0-03-58 Hectares comprised in seven Khasra Numbers was earlier jointly owned and possessed by the parties prior to 20.6.1991 and thereafter on the basis of the partition order passed by the A.C. 1st Grade dated 20.6.1991, the plaintiff is in exclusive possession of the suit land. The mutation was also attested in favour of the plaintiff on 3.9.1992. It was alleged that the possession of the suit land was given to the plaintiff who is in exclusive possession and since the defendants are threatening to interfere in possession of the plaintiff over the suit land, hence the suit filed by the plaintiff.

3. Defendants took up the plea that they were never summoned by the Revenue

Court and behind the back of the defendants, the partition application was decided. Moreover, the partition proceedings were stayed by the Civil Court as well as by the Collector and the defendants are in possession and are owners of the suit land for the last so many years. It was alleged that no possession was delivered to the plaintiff and as such, he is not entitled to the relief of injunction claimed by him.

4. On the pleadings of the parties, issues were framed by the learned trial Court and the main issues were as to whether the defendants are owners in possession of the suit land and whether the plaintiff is entitled to the relief of permanent injunction.

5. Parties led their evidence and the learned trial Court vide its impugned judgment decided all the issues numbering 1 to 5 in favour of the plaintiff and as against the defendants and consequently, decreed the suit of the plaintiff. On appeal, those findings were affirmed by the learned Additional District Judge. Hence, the present appeal filed by the defendants.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. The appeal was admitted on four substantial questions of law framed therein alongwith the grounds of appeal. However, as shall be discussed below, no question of law arises except Question No. 4 whether the learned Additional District Judge has erred in not considering the application for amendment of written statement under Order 6 Rule 17 CPC This is the only question, which arises for consideration and the remaining questions do not arise from the pleadings of the parties.

8. Coming to the question, it was submitted by the learned Counsel for the appellant that the defendants had filed an application for amendment of the written statement, which application is dated 24.2.1999. An opportunity was given to the plaintiff to file reply, but the reply in question is not on the file. The appeal was dismissed by the learned Additional District Judge vide his judgment dated 11.11.1999 and the application was also dismissed on the same date. It was contended by the learned Counsel for the appellants that since the application was dismissed after dismissal of the main appeal, the said order is liable to be set aside. It has to be considered as to whether the application was decided after decision of the appeal and as to whether the said order is liable to be set aside.

9 To substantiate his plea, learned Counsel for the appellants had relied upon an unreported decision in Parmeshwari Dass and Anr. v. Sadhu and Ors. R.S.A. No. 218 of 2000, decided on 29.4.2010. An attested copy of the same was placed on record. In that case it was held that the learned Additional District Judge had committed procedural error in deciding the application under Order 41 Rule 27 CPC after the decision of the main appeal and the case was remanded back.

10. On the other hand, my attention has been drawn by the learned Counsel for the respondent to the order passed by the learned Appellate Court on 11.11.1999 when it was observed that in view of the disposal of the main appeal application under Order 6 Rule 17 CPC is dismissed. Even otherwise, the same is not tenable in the eye of law for the reason that it is settled law that abatement does not apply to the partition proceedings before Revenue Court and, therefore, to challenge the order of the A.C. Ist Grade, by way of amendment would neither be relevant nor on that basis proposed amendment in the written statement is necessary for the purpose of determining the real question in controversy between the parties. It is, therefore, clear that from a perusal of this order that though the order for dismissal of the application as well as the appeal was passed on the same day, but the arguments on the application had already been heard and the case was fixed for order on the main appeal as well as on the application when the order was passed. Though firstly it was written that the appeal is dismissed and the application is also dismissed in view of the disposal of the main appeal by the learned Appellate Court, however, reasons have been assigned for the dismissal of the said application. The mere fact that both the orders were passed on the same day does not lead to inference that the present application was decided after decision of the main appeal since arguments had also been heard on the application also prior to the date of the decision, it cannot be said that the present application was considered after disposal of the appeal or entertained after disposal of the appeal. A reference was also made to the decision of learned Single Judge of this Court in Baldev Parkash and Ors. v. Dhian Singh and Ors. Latest HLJ 2008 (HP) 599, in which the learned Judge observed that non-disposal of the application for additional evidence by lower Appellate Court under Order 41 Rule 27 C.P.C., when it was not decided by the Appellate Court. The non-deciding of the application has no effect on merit of the case. Thus, the final judgment of the Court is not affected by this fact. The Court has gone to this extent in holding that even the non-disposal of the said application does not affect the merits of the case. It was held that even non-deciding of the application was held to be not affecting the merits of the case and as such, no case was made out for remanding of the case to learned Appellate Court on this ground only that the application was presumably disposed of after the disposal of the appeal, since it was disposed of on merits on the same day.

11. Coming to the amendment sought, there was nothing in the application as to the date when the partition application was decided by the Court. The date when some of the parties had died and, therefore, also on the merits, no case was made out for allowing the application for amendment since complete particulars or facts had not been alleged in the application therein. Moreover, once the application for partition had been decided as against the applicants and their review application was also dismissed by the Collector as has come on record, no case was made out for considering this question. Once the defendants had not filed suit challenging the order passed by the Revenue Officer being without jurisdiction or challenging the same before the Financial Commissioner or other

appellate authorities that the order passed on partition was liable to be set aside. The learned First Appellate Court has already referred to the question that there is order of Collector dated 12.6.1996 Ext. P-2 partitioning the suit land and petition was thereafter considered by the Collector and the review petition was also dismissed and there is copy of the order vide which the possession was also delivered to the plaintiff and the revenue entries clearly showed the exclusive possession of the plaintiff over the suit land. Thus, it is clear that the mere fact that the application was dismissed on the same date as the main appeal, is no ground to hold that the application was not decided by the learned Appellate Court and no case is made out for remanding the case to learned trial Court for fresh decision, after lapse of time.

12. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which is liable to be dismissed and the same is accordingly dismissed. However, the parties are left to bear their own costs.