

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 373 of 2006

Date of decision 30.8.2006

Shiv Chand and others

...Appellants.

Versus

Vinay Kumar and others

...Respondents.

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellants: Mr. T.S. Chauhan, Advocate.

**For respondents : Mr. Bhupender Gupta, Sr. Advocate, with
Mr. Janesh Gupta, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The respondents are owners in possession of land, bearing Khasra No. 324. They filed a suit in the year 1994 against the present appellants seeking grant of permanent prohibitory injunction restraining the appellants from interfering in their aforesaid land. The matter was compromised on 22.10.1994 and it was agreed that the appellants would

Whether reporters of Local Papers may be allowed to see the Judgment?

...2...

not cause any interference in Khasra No. 324, which they admitted to belong to the respondents. In view of the aforesaid statement, made by the appellants, the suit was withdrawn by the respondents. In the year 1999 the respondents again filed a suit (which has led to the filing of the present appeal) alleging that the appellants had again started interfering in Khasra No. 324 and they sought issuance of permanent prohibitory injunction restraining the appellants from causing any interference in their possession and in the alternative, it was prayed that in case the appellants succeeded in raising any construction on any portion of the suit land, i.e. Khasra No. 324, in that situation decree for possession of that portion, after demolition of the structure which the appellant might raise, be also passed.

3. The appellants contested the suit and pleaded that they had been in adverse possession of a portion of the suit land since 1964 and that since their possession was open, hostile, peaceful and as of right, they had acquired title. They claimed that they had constructed a house on a portion of Khasra No. 324 long back.

4. Trial Court framed issues based on the pleadings of the parties and recorded the evidence adduced by the parties. The respondents, while leading their evidence, examined one Kanungo and got proved from him a demarcation report. As per the testimony of the Kanungo and the report, demarcation was carried out on the spot (on the application of the respondents, which they submitted to the Tehsildar) on 16.7.1999. The Kanungo found that on a portion of Khasra No. 324, depicted by Khasra No. '324/1' in the Tatima attached with the report, a tin-posh structure had been raised on the spot by the appellants / defendants recently. The trial Court, based on the evidence, particularly the report and

...3...

the testimony of the Kanungo, returned the finding that the appellants had made encroachment on a portion of Khasra No. 324 by raising construction thereon during the pendency of the suit and consequently decreed the suit and passed a decree of permanent prohibitory injunction as also mandatory injunction. The appellants filed appeal in the Court of the learned District Judge, which stands dismissed.

5. Now the appellants have come in appeal to this Court. It is submitted by the learned counsel representing the appellants that the relief of mandatory injunction could not have been granted, because no court fee for such relief had been filed. I find no merit in the submission. The respondents prayed not only for issuance of permanent prohibitory injunction but also for decree of possession (in the alternative) as already noticed above and valued the suit accordingly.

6. The learned counsel representing the appellants further submitted that the appellants had made an application to the learned District Judge, under Order 41 Rule 27 of the Code of Civil Procedure, seeking the leave of the Court to lead additional evidence. According to him, the application has been dismissed by the learned District Judge without applying the principles of law correctly. He says that the additional evidence, which the appellants wanted to adduce, would have conclusively proved that the house existed on a portion of Khasra No. 324 more than twelve years prior to the institution of the suit. I have been taken through the relevant record, particularly the order passed by the learned District Judge on the application, under Order 41 Rule 27 of the Code of Civil Procedure. A perusal of the order shows that the additional evidence, which the appellants wanted to lead, was in the nature of electricity and

...4...

water bills showing that the appellants had been getting bills for consumption of power and water from the concerned departments. These bills in no way would have proved the plea of the appellants that the house, in respect of which they had been receiving the bills, stands on Khasra No. 324. In any case, there is independent evidence in the form of statement and report of the Kanungo, according to which the structure had been raised on a portion of Khasra No. 324 recently.

7. No other point has been urged.

8. The above discussion shows that no substantial question of law arises. Hence the appeal is dismissed.

August 30, 2006 (BC)

**(Surjit Singh)
Judge**