

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

FAO No. 50 of 2002.

Date of Decision: 23.6.2006

Chandu & ors.

...Appellants.

Versus.

Dengu & ors.

... Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting? No

For the Appellant(s): Mr.C.B.Singh, Advocate.

For the Respondent(s): Mr. B.K. Malhotra, Advocate.

Deepak Gupta, J.

This appeal is directed against the order of the learned Addl. District Judge, Mandi in Civil Appeal No.56 of 1996 decided on 12.10.2001 whereby he framed an additional issue and remanded the case back to the trial Court for decision afresh.

The facts necessary for disposal of the present appeal are that admittedly the plaintiffs (respondents in the present appeal) and the defendants (appellants herein) are all related to each other and have inherited the suit land from their common ancestor Shri Budhu. The plaintiffs alleged that two of the co-owners Chiru and Khimu in

connivance with the revenue officials had got mutation No.172 dated 15.2.1986 attested in their favour behind the back of the plaintiffs and proforma-defendants and it was fraudulently mentioned that Chiru and Khimu have exchanged the land with defendants Dengu, Gangu and Chelu. The plea of the defendants was that an exchange had taken place and the plaintiffs and proforma defendants had exchanged their suit land and that the mutation was rightly attested. The trial Court dismissed the suit of the plaintiffs and in appeal the learned lower appellate Court held that one of the necessary issues which arose in the suit had not been framed. It, accordingly, framed issue No.7-A and remanded the suit. The additional issue framed by the learned lower appellate court reads as follows:

“ 7-A.Whether the plaintiffs and proforma –defendants exchanged their share in the suit land with land comprised under khata No.46 khasra No.102 measuring 1-8-2 bighas situated at Muhal Sara/531 Sub Tehsil Aut District Mandi, HP as alleged? OPD”

Against this order of remand, the appellants filed the present appeal in this Court.

According to Mr. C.B.Singh, learned counsel for the appellants the issue now framed by the learned lower appellate Court was already covered under issues No.1 and 2 and he further submits that the parties were aware of the fact that the main dispute in this case is whether exchange had taken place or not. He, therefore, submits that

since the parties are well aware of this fact they led evidence on point issue also and, therefore, merely because of non-filing of a specific issue ,no prejudice has been caused to the parties.

On the other hand Mr. B.K.Malhotra, learned counsel for the respondents submits that though this issue may be covered under issues No. 1 and 2, there is no harm if a specific issue is framed so that there may be further clarity in the matter. He further submits that no further evidence is sought to be led in this matter since the case of the appellants is that the freshly framed issue is already covered under issues No. 1 and 2. Obviously, the parties have led evidence with regard to freshly framed issue and their counsel stated at the Bar that no further evidence is sought to be led on this issue. In view of the fact that no further evidence is to be led by the parties and the point in issue can be decided on the evidence already on record, the matter need not be remanded to the trial Court.

In view of the above discussion, the appeal is allowed and the order of the learned lower appellate court dated 12.10.2001 is set aside and the case is remanded to the learned lower appellate Court who shall restore the appeal to its original number and decide the same on merits. While disposing of the case, he shall also decide freshly Issue No.7-A framed by it on the basis of the evidence already on record.

Appellants and respondents No.1 to 8 through their counsel are directed to appear before the learned lower appellate Court on 22.7.2006. The Registry is directed to return the records of the courts below so as to reach there before the date fixed. The learned lower appellate court shall not issue notice to appellants and respondents 1 to 8 but shall issue notice to respondents 9 and 10 herein i.e. Bhainsaru and Smt. Kali.

Keeping in view the fact that the suit was filed in the year 1993 and the appeal was filed before the learned Addl. District Judge in 1996, the learned lower appellate Court is directed to dispose of the suit as expeditiously as possible and in any event not later than 31st December, 2006.

June 23, 2006.
s.

(Deepak Gupta),
Judge.