

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 174 of 2006

Decided on : April 20, 2006

Sita Ram

.....Appellant.

VERSUS

Shiv Singh and others

.....Respondents.

Coram

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

***Whether approved for reporting?* No**

For the Appellant : Mr. J.L. Bhardwaj, Advocate.

For the Respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard. Plaintiff Kalashi Devi filed a suit seeking declaration that she was owner in possession of 4 *bighas 7 biswas* of land, bearing *Khasra* No. 1168/1099/1041/1, and also 2 *biswas* portion of *Abadi Deh*, bearing *Khasra* No.84. She claimed that 4 *bighas 7 biswas* land had been granted to her by the Government and that 2 *biswas Abadi Deh* area had been in her possession. Trial Court decreed her suit. Appeal was filed by the present appellant-defendant before the District Judge. That has been dismissed. Now, the appellant-defendant has come to this Court.

2. Learned counsel representing the appellant-defendant admits that so far as 4 *bighas 7 biswas* land is concerned, the matter having already been decided by the Revenue Authorities right up to

¹ *Whether the reporters of the local papers may be allowed to see the Judgment? Yes.*

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the level of Financial Commissioner, the finding of the Courts below calls for no interference. His grievance is only with regard to 2 *biswas* land forming part of *Abadi Deh*. His contention is that the predecessor of the respondents is not shown in possession of any portion of *Abadi Deh* and, therefore, the findings of the Courts below are not sustainable. This argument is without merit because in *Abadi Deh* no individual in the village is recorded as owner in possession of any portion thereof. The Courts below have returned the finding in respect of 2 *biswas* land on the basis of the oral evidence led by the parties.

3. Learned counsel representing the appellant-defendant says that the plaintiff had not stepped into the witness box in support of her claim that she was in possession of a portion of *Abadi Deh* and, therefore, adverse inference was required to be drawn against her. He also, however, admits that husband of the plaintiff, who also holds power of attorney on her behalf, has appeared as a witness. Looking to the fact that the attorney of the plaintiff was also her husband and, as such, supposed to be in the know of all the facts of the case, no adverse inference need be drawn against the plaintiff for not entering the witness box.

4. Further, contention of the learned counsel for the appellant is that the attorney of the plaintiff did not say that the plaintiff was in possession of 2 *biswas* area in *Abadi Deh*. The two Courts below have come to a definite and concurrent finding, on the appraisal of the entire evidence led by the parties, that the plaintiff is in possession of 2 *biswas* land in *Abadi Deh*. Therefore, simply for

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the reason that there is omission in the statement of the attorney of the plaintiff that the plaintiff is in possession of 2 *biswas* land of *Abadi Deh*, it cannot be said that the findings recorded by the two Courts below are not correct.

5. Appeal is dismissed.

CMP No.252/2006

Infructuous.

April 20, 2006(sd)

**(Surjit Singh)
Judge.**