

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 230 of 2006

Decided on : May 25, 2006

Shankar Singh and others

.....Appellants.

VERSUS

Smt. Sheelan Devi and others

.....Respondents.

Coram

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

Whether approved for reporting?

For the Appellants : Mr. K.S. Banyal, Advocate.

For the Respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record. Respondents-plaintiffs filed a suit for declaration that they are owners in possession of land, measuring 2-71 Sq. mtrs., bearing khasra number 1205/1, as per entry in the Jamabandi for the year 1991-92, but the appellants-defendants, without any right, title or interest, were threatening to dispossess them. So, besides seeking the relief of declaration, they also prayed for a decree of permanent prohibitory injunction, restraining the appellants-defendants from causing interference in their possession. In the alternative, they prayed for a decree for possession of the suit land, in case the Court came to the finding that the possession was with the appellants-defendants.

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

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2. Case of the appellants-defendants was that they had been in possession of the suit land since times immemorial and their possession was open, hostile, uninterrupted, continuous and as of right and so they had acquired title by prescription.

3. Trial Court, after recording the evidence adduced by both the parties, returned the finding that though the possession of the suit land was with the appellants-defendants, the same was not adverse and consequently a decree for possession was passed in favour of the respondents-plaintiffs. Appellants-defendants went in appeal to the Court of the District Judge. Appeal has been dismissed and the finding of the trial court, that though the appellants-defendants are in possession, their possession is not adverse, has been affirmed.

4. In the present appeal, it is alleged that as a matter of fact the predecessors of the parties were joint *Khewatdars* and that the share of the respondents-plaintiffs and their predecessors in the joint *Khata* was to the extent of only 11 kanals 10 marlas, but now the entries in the revenue papers show them as owners to the extent of 16 kanals 7 marlas of land and this aspect of the matter has not been gone into by the two Courts below. The contention has been noticed only to be rejected. At no stage did the appellants-defendants plead that the respondents-plaintiffs were recorded as joint owners to an extent in excess of their actual share in latest record, nor did they at any stage deny that the respondents-plaintiffs were the owners of the suit land. Their simple and plain case was that they had acquired title by adverse possession.

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5. In view of the above stated position, I do not think any question of law, what to speak of a substantial question of law, arises. So, the appeal is dismissed.

CMPs No.364 & 365 of 2006

Infructuous.

May 25, 2006(sd)

**(Surjit Singh)
Judge.**