

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

R.S.A. No. 217 of 1993.

Judgement reserved on:

Date of decision : March 29, 2006.

Mast Ram & others

..... Appellants.

Versus

Amar Singh & ors.

..... Respondents.

Coram

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

Whether approved for reporting?

For the appellants:

Mr. Ankush Dass Sood, Advocate
Ms. Sweta Julka, Advocate.

For the respondents:

Mr. G.C.Gupta, Sr. Advocate with Mr.
Mohinder Gautam, Advocate, for
Respondents No. 1 to 15, 16© and
17(b).

Surjit Singh J. (Oral).

This appeal was admitted on the following question of law:-

“Whether in the circumstances of the case,
defendants have not matured their title by
adverse possession or in the alternative an
irrevocable licence? “

Facts relevant for the decision of the appeal and answering
the aforesaid question may be noticed. Respondents- plaintiffs
filed a suit for possession of 1 Kanal 5 Marlas land having five

Whether reporters of local Papers may be allowed to see the judgment?

rooms and two cattle- sheds on it and described as Abadi in the revenue papers, pleading that the property had been given to the predecessor of the defendants by the predecessor of the plaintiffs on the understanding that he and his successors would continue to assist the predecessor of the plaintiff in cultivating their land and also would render domestic help. It was alleged that about two years before the institution of the suit, the defendants stopped rendering help to the plaintiffs in their domestic as also agricultural work and so they were liable to vacate the property. A notice was issued to the defendants before the filing of the suit requiring them to hand over the possession.

Defendants- appellants contested the suit. They alleged that their predecessor had been inducted as a tenant and that by operation of law, their tenancy rights had matured into ownership rights. In the alternative, they pleaded that they had acquired title by prescription. They denied that there stood houses and cow-sheds etc. on the suit property, when it was let out to their predecessor and that in fact the houses and cow-sheds had been constructed by their predecessor. Certain other issues were also raised, which are not relevant for the purpose of deciding the present appeal.

Learned trial court accepted the plea of the appellants- defendants that they had acquired title by prescription and accordingly dismissed the suit. Plaintiffs filed an appeal in the court of District Judge, who reversed the finding of the trial court with regard to the plea of adverse possession of the defendants- appellants and consequently passed a decree for possession in favour of the respondents- plaintiffs.

Appellants- defendants have filed the present appeal. Appeal was admitted on the aforesaid question of law.

Having heard the learned counsel for the parties and having gone through the record, I am of the view that the appeal is without merit. A careful reading of the pleadings shows that as a matter of fact, plea of grant of irrevocable licence in favour of the appellants- defendants had not been raised by the defendants and, therefore, their appeal could not have been admitted on the question that the defendants- appellants had become owners, because of the grant of irrevocable licence in their favour. As already noticed, the defendants – appellants took the plea that tenancy had been created in their favour and that they had acquired title by operation of tenancy laws. This plea of theirs was rejected by the trial court because the finding on the issue based on this plea was returned against them. The finding was not challenged by them by filing cross- appeal or cross-objection in the first appellate Court.

As regards the second part of the question, which pertains to the plea of adverse possession and on which the trial court decreed the suit, but the District Judge reversed it in appeal, suffice it to say that the appellants- defendants did not even plead the necessary ingredients of the plea of adverse possession. They simply stated that they had been inducted as tenants and by operation of law they had acquired ownership rights and that if this plea did not find favour with the Court, in that situation, they had acquired title by prescription. They did not state as to when did their adverse possession commence nor did they state anything indicating that they had hostile animus.

Learned counsel for the appellants placing reliance upon a Division Bench judgement of Madras High Court in **Chinnan and others** vs. **Ranjithammal** [AIR 1931 Madras 216], submits that after the death of the predecessor of the appellants- defendants, who according to him was a licensee, the possession of the appellants- defendants became adverse. In view of my aforesaid observation that this is not a case of licence, because no such plea has been set up by the defendants, the precedents relied upon has no application.

Learned counsel further argued that the suit was barred by limitation in view of the provisions of Sections 66 and 67 of the Limitation Act. The appeal having not been admitted on the question of limitation, the argument need not be gone into and dealt with. So it is rejected summarily.

In view of the above stated position, the appeal is dismissed.

All the pending applications, if any, are also dismissed in view of the dismissal of the main appeal.

March 29, 2006.
(Hem)

(Surjit Singh),
Judge.