

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 540 of 2004

Decided on : April 27, 2006

Ramesh Chand and another

.....Appellants.

VERSUS

Gulshan Kumar and others

.....Respondents.

Coram

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

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

For the Appellants : Mr. Ajay Sharma, Advocate.

**For the Respondents : Mr. G.D. Verma, Senior Advocate,
with Mr. B.C. Verma, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record. Plaintiffs' predecessor, Sohan Lal, vide a deed dated 28.8.1937, labeled *Tamliknama*, gave his half share in land, measuring 20 *Kanals* 12 *Marlas*, to his brother Kali Dass for management, as he himself was sick and though he had a son, named Daya Sagar, he did not trust him and felt that he will squander away the property. Soon after the execution of *Tamliknama*, Sohan Lal died. Kali Dass, in whose favour the *Tamliknama* was executed by Sohan Lal, executed a relinquishment deed in the year 1938, relinquishing the property in favour of latter's son, Daya Sagar. Plaintiffs-appellants are the legal heirs of Daya Sagar. They filed a suit claiming that they are owners

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

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in possession of the entire area of *Khasra* Nos.521 and 522 and sought issuance of permanent prohibitory injunction, restraining the respondents-defendants from interfering in their possession.

2. Respondents-defendants contested the claim. Their plea was that they had been bequeathed half share in the suit property by Kalawati, the widow of Kali Dass, a brother of Sohan Lal. They pleaded that Kali Dass was joint owner to the extent of half share with Sohan Lal and that during his life time he had executed a Will in favour of his wife Kalawati and before her death (Kalawati died in the year 1991) she executed a Will in favour of the defendants. The case of the plaintiffs was definite and specific that Sohan Lal was owner of the whole of the property, bearing *Khasra* Nos. 521 and 522 and that he had given it by *Tamliknama* to his brother Kali Dass for management and so he could not have made any Will in respect of any portion thereof.

3. The trial Court dismissed the suit, holding that both Sohan Lal and Kali Dass were joint owners to the extent of half share each and what Sohan Lal had given to Kali Dass was the half share in the suit property and that Kali Dass also relinquished only that half share, which was given to him for management, and that he remained joint owner in possession as regards the remaining half and, therefore, he had the right to Will away the half share. First Appellate Court, on having been approached by the appellants-plaintiffs, has dismissed the appeal endorsing the aforesaid finding and view of the trial Court.

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4. It has been urged before this Court on behalf of the appellants that as a matter of fact Kali Dass's half share was mortgaged with some person and that the mortgage had been redeemed by Sohan Lal and, thus, he had the right to remain in possession of the whole of the property, even of Kali Dass's share because its mortgage had been redeemed by him (Sohan Lal). The argument cannot be even taken note of for the simple reason that no foundation for such an argument is laid in the pleadings. Otherwise also, the mutation of redemption of mortgage indicates that the redemption had taken place in the year 1920, whereas *Tamliknama* was executed in the year 1937 and in the said *Tamliknama* Sohan Lal had himself stated that he was owner to the extent of only half share in the suit property and that he was passing on the management of that half share to his brother Kali Dass.

5. As already noticed, the plaintiffs' plea was very specific and categorical that Sohan Lal was the exclusive and absolute owner of the suit property. The claim of the plaintiffs has rightly been rejected by the two Courts below, because *Tamliknama* executed by Sohan Lal, the predecessor of the plaintiffs, unambiguously reads that Sohan Lal was owner to the extent of only half share and what Kali Dass had relinquished in favour of Daya Sagar was that property which had been given to him by Sohan Lal for management, through *Tamliknama*, and nothing more than that, that is to say that he did not relinquish any portion of his own one-half share in the property in favour of Daya Sagar, son of Sohan Lal.

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6. In view of what has been stated above, no question of law, muchless a substantial question of law, arises. The appeal is dismissed.

CMP No.1069/2004

Dismissed, as having become infructuous.

April 27, 2006(sd)

**(Surjit Singh)
Judge.**