

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 516 of 2006.

Date of decision: 29.11.2006.

Man Chand alias Manu ... Appellant

Versus

Sobha Ram & Anr. ... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant : Mr. Paresh Sharma, Advocate.

For the respondents: Nemo.

V.K. Ahuja, J. (Oral):

This is a second appeal filed by the appellant-defendant against the judgment and decree of the Court of learned District Judge, Kullu, dated 28.8.2006, vide which the findings of the learned Civil Judge (Jr. Division) Manali, vide judgment dated 1.5.2006 decreeing the suit of respondent/plaintiff for mandatory injunction of the land measuring 1-11 Bighas comprised in Khasra No. 5258 was decreed.

Briefly stated the facts of the case are that the respondent No. 1 had filed a suit for mandatory injunction against the appellant and respondent No. 2 who were impleaded as defendants No. 1 and 2 alleging that they are trying to interfere over the suit land and in case, the possession is taken forcibly during the pendency of the suit, the suit may be decreed by way of mandatory injunction. The defendant/appellant and respondent No. 2 resisted the suit and took up the simple plea that since

¹Whether reporters of Local Papers may be allowed to see the judgment? No.

their father who is alive occupied the land openly, peacefully and continuously since 1970. They have become the owner of the suit land by way of adverse possession. A plea was also taken that defendants have constructed a house and septic tank since 1988. The suit was tried by the learned trial Court and the plea of adverse possession taken by the appellant and proforma respondent did not find favour with the learned trial Court who decreed the suit which findings were upheld by the learned first appellate Court.

During the course of hearing, the learned counsel for the appellant has not been able to convince this Court as to what substantial question of law was involved. A perusal of judgments of both the Courts below shows that the evidence has been duly appreciated by both the Courts below and they have come to the same conclusion. The plea of adverse possession taken by the appellant and proforma defendant was not established and in para 12 of the judgment, the learned first appellate Court had clearly observed that the learned counsel had not addressed any argument qua the plea of adverse possession since it was not proved. I do not find any reason to disagree with the findings of both the Courts below. No question of law is involved muchless substantial question of law and as such, the findings of the learned first appellate Court calls for no interference by this Court. No case is made out for admission of the appeal and the appeal is accordingly dismissed. No order as to costs.

CMP No. 928 of 2006:

In view of the orders passed in the main appeal, this application also stands disposed of.

**November 29, 2006
(BSS)**

**(V.K. Ahuja),
Judge**

