IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 614 of 2005.

Judgement reserved on:

Date of decision : May 24, 2006.

Prithi Singh …….. Appellant.

Versus

Gian Chand ……. Respondent.

Coram

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

Whether approved for reporting?

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

For the respondent: Mr. Ajay Sharma, Advocate.

Surjit Singh J. (Oral).

Heard and gone through the record. Respondent- plaintiff, Gian Chand filed a suit against the appellant- defendant, seeking a decree of permanent prohibitory injunction, restraining the appellant-defendant from raising any construction on any portion of khasra No. 109, measuring 0-00-75 Hects., which he claimed to belong to him. He alleged that he had a house on the said khasra No. 109, but the defendant- appellant had started stacking building material to make encroachment upon a portion of that area.

Suit was contested by the defendant- appellant. Various

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

preliminary objections were raised. On merits, it was alleged that land measuring 2 Kanals 1 Marla, bearing khasra No. 80 (old) was initially a Nullaha and thereafter it was recorded as Rasta, because it was being used as a passage and during the settlement operation, which concluded in the year 1983-84, a portion of khasra No. 80 was assigned khasra No. 109 and shown in the possession of the respondent- plaintiff. He alleged that there existed no abadi of the plaintiff and that the entry was manipulated.

The trial court dismissed the suit holding that the plaintiff had failed to establish his case. The trial court mainly relied upon the statement of the plaintiff himself, in which he stated that he had given a portion of the land, bearing khasra No. 109 to his brother, and came to the conclusion that the plaintiff was not sure whether the suit land was possessed by him or his brother and that no Tatima of the portion that had allegedly been given to his brother having been filed, no relief could be granted.

Plaintiff-respondent went in appeal to the court of District Judge. The appeal has been accepted with the finding that the land bearing khasra No. 109 forming part of khasra No. 80 (old) has been in possession of the respondent- plaintiff at-least since 1985-86, when the entry for the first time appeared in his favour in the revenue papers and that he has his house on this land. The first appellate court has placed reliance upon copies of jamabandies as also the oral evidence.

Appellant's grievance is that the first appellate court has not appreciated the evidence correctly and has fallen in error in placing reliance upon the entries in the revenue papers and giving too much

weightage to those entries. It is also his contention that the pleadings have not been construed correctly.

I have heard the learned counsel for the appellant and gone through the record. A perusal of the evidence on record, both documentary, i.e. copies of entries in jamabandies and a report of the Kanungo submitted by him after carrying out demarcation on the spot, and oral suggests that on a portion of old khasra No. 80, which is now described by khasra No. 109, there exists a house. The total area of this khasra number is just 75 square metres. Appellant-defendant does not claim that the house belongs to him. Plaintiff-respondent has claimed that the house is owned and possessed by him. This claim of the plaintiff cannot be disbelieved, especially when the appellant- defendant does not say that the house belongs to him or to any other person. As a matter of fact, a reading of the statement of the appellant- defendant, which he made as DW 1, suggests that he does not deny the existence of the house of the plaintiff on the suit land. Now if a house stands on the suit land and the evidence points clearly that the house belongs to the plaintiff, no fault can be found with the judgement of the first appellate court.

The learned counsel representing the appellant has stated that entry showing the respondent- plaintiff in possession of the suit land appeared for the first time in the revenue papers during the course of settlement process and that plaintiff manipulated to secure this entry in connivance with the field staff of the settlement. There is absolutely no evidence in support of this contention.

Appellant’s counsel has further submitted that he has taken the matter to the Divisional Commissioner, Mandi, challenging the

order of the Subordinate Officers of the Settlement Department, whereby appellant's prayer for deleting the name of the respondent-plaintiff from the settlement record, showing him to be in possession of the suit land, has been dismissed. He has placed before me a Photostat copy of the order passed by the Commissioner, whereby an appeal has been admitted and stay pending disposal of the appeal granted. The argument is of little significance in deciding the present matter. The evidence on record conclusively proves that plaintiff has his house on the suit land and therefore, it cannot be said that he is not in possession or that the entry showing him in possession and that he has his house on this land is wrong.

The above discussion clearly indicates that no question of law, much-less a substantial question of law, arises. Hence the appeal is dismissed.

CMP No. 1075 of 2005.

Interim order dated 2.12.2005, stands vacated and the application is dismissed.

May 24, 2006. **(Surjit Singh),**
(Hem) **Judge.**