

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 495 of 2006.

Reserved on: 24.8.2007.

Date of decision: 31.8.2007.

Chuharu ... Appellant

Versus

Jai Ram & Anr. ... Respondents

Coram :

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

Whether approved for reporting?¹ No.

For the appellant : Mr. G.R. Palsra, Advocate.

For the respondents: Mr. Bhupinder Gupta, Sr. Advocate with Mr. Ajeet Jaswal, Advocate.

V.K. Ahuja, J.:

This judgment shall dispose of the Regular Second Appeal filed by the appellant against the judgment and decree of the Court of learned District Judge, Mandi, dated 1.8.2006, affirming the judgment and decree passed by the learned Civil Judge(Junior Division), Chachiot at Gohar on 31.12.2005.

Briefly stated the facts of the case are that a suit for declaration and injunction was filed by the appellant as against the respondents alleging that the suit land is recorded as jointly owned and possessed by the plaintiff and defendant No. 2 who had purchased the land from defendant No. 1. It was alleged by the plaintiff that the suit land is recorded as total 8 parts, out of which 7 parts are of the plaintiff and one part of defendant No. 2 showing defendant No. 2 as owner to the extent of 1/8 share measuring 1-19-15 bighas which entries are

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes.

wrong, illegal and liable to be corrected. It was alleged that defendant No. 2 had purchased from defendant No.1 the land measuring 1-12-8 on 12.4.1989 out of the total land and the entries have been wrongly shown after consolidation and as such, they are liable to be corrected accordingly. The plaintiff had also alleged that the Assistant Collector Ist Grade had proceeded with the partition proceedings irrespective of objections raised by the plaintiff with regard to the alleged increase in the share of defendant No. 1 and finally he allowed the partition on 30.12.2003. The defendants were alleged to have started interfering over the joint land by encroaching upon the same more than the share purchased by them, hence the suit filed by the plaintiff.

Defendants pleaded that the suit land is recorded in the jamabandi jointly owned and possessed by the plaintiff, defendants No. 1 & 2 and H.P. State Electricity Board. Defendants No. 1 & 2 are joint owners of the land measuring 1-19-15 bighas out of the suit land. Defendant No. 1 had purchased 3/10 share out of 40/96 share i.e. 1/8 share out of the share of the plaintiff and during consolidation, a compromise was effected in between the plaintiff, defendant No. 1 and other joint holders and they agreed to make good the share in the land belonging to Chuharu, plaintiff and defendant No. 1 and on that basis, the area of the land in the share of the plaintiff and defendants increased during consolidation operation. Thus, it was pleaded that since the area increased during consolidation operation, the Assistant Collector Ist Grade had rightly allowed the partition of the share and the suit is liable to be dismissed.

The learned trial Court held that the entries in the revenue record are correct and the plaintiff was not entitled to the relief claimed by him. On appeal, those findings were upheld by the learned District Judge.

I have heard the learned counsel for the parties and have also gone through the record.

The submissions of the learned counsel for the appellant mainly were that the compromise was effected in between the plaintiff and other co-sharers including defendant No. 1 and since defendant No. 2 was not a party to the compromise, he was not entitled to the increase in his share. These submissions were controverted by the learned counsel for the respondents who submitted that defendant No. 2 was a purchaser of the land from defendant No. 1 and once the share of plaintiff and defendant No. 1 increased in view of the compromise in between the parties during consolidation, increase or decrease in the area can take place during consolidation keeping in view the quality of the land and as such, the area of the land purchased by defendant No. 2 also increased. The submissions of the learned counsel for the appellant were that this Court should consider the compromise as to who were the parties to the same, how far the area of defendant No. 2 purchased could also increase as a result of purchase from defendant No. 1. However, all these questions are pure questions of fact and therefore, there is no necessity of reappraisal of the evidence or terms of the compromise Ext. DW3/A. A perusal of the judgment of the learned District Judge shows that there were clear observations of the Court that the plaintiff came to the Court after consolidation operation during which the area of the land is likely to increase or decrease and he raised no objections. He is challenging the validity of the consolidation proceedings before Consolidation Officer under Section 30(2) of the Consolidation Act, but no appeal was filed under Section 54 of the Act against the preparation of the record of rights. These objections are being taken by the plaintiff even after the completion of the consolidation proceedings and even after the proceedings for partition had concluded before the Assistant Collector Ist Grade. There are findings by the learned first appellate Court that

the compromise was entered into in between the various co-sharers including plaintiff and defendant No. 1 and others who relinquished their share in favour of Chuharu i.e. the plaintiff and defendant No. 1 also got share in the compromise as admitted by the plaintiff as a witness and as such, these findings do not require re-appraisal of the evidence by this Court. No question of law has been raised muchless substantial question of law which was mainly framed alongwith the appeal in regard to the interpretation of the compromise which question does not arise for reconsideration by this Court. Once there are findings of both the Courts below and those findings of fact cannot be again challenged by making out the case as a substantial question of law being involved in regard to interpretation of the documents. Thus, no case is made out for admission of the appeal on any substantial questions of law proposed at the time of filing of appeal and as such, there is no merit in the appeal, which is accordingly dismissed. However, the parties are left to bear their own costs.

August, 31, 2007
(BSS)

(V.K. Ahuja),
Judge