

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

Regular Second Appeal No.326 of 1995

Date of decision: 31.05.2007

State of H. P.

Appellant

Versus

Jagdish Chand

Respondents

Coram

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

Whether approved for reporting ?¹ No.

For the appellant: Mr. V.K. Verma, Additional Advocate General.

For the Respondent: Mr. Ajay Kumar, Advocate.

Surjit Singh, J (oral)

Respondent, hereinafter called the plaintiff, filed a suit for declaration that he was owner in possession of land measuring 3 bigha 2 biswas, forming part of Khasra No.580 shown by min No.580/1, situate in a village of Rohru Tehsil, District Shimla. He claimed that he had been in possession of the suit land for the last 40 years. It was alleged that initially the father of the plaintiff was in possession of the suit land and after his death, it was the plaintiff, who had been continuing in possession and that the total length of the period for which the possession of the plaintiff and his father had been there on the land, was about 40 years. It was alleged that proceedings under Section 163 of the H.P. Land Revenue Act had been initiated against the plaintiff-respondent by the Assistant Collector 2nd Grade, Rohru in the year 1983, which culminated in the passing of the order of ejectment in the year 1989. The order was alleged to be bad,

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

illegal and void because by the time the proceedings were initiated, as also on the date when the order was passed, the respondent-plaintiff had already acquired the title by prescription and hence, the property had ceased to be the Government property and no order could have been passed under the provisions of Section 163 of the H.P. Land Revenue Act.

2. Suit was contested by the appellant-defendant/State of H.P. It was denied that the possession of the plaintiff and his predecessor had been for more than 40 years. It was alleged that the plaintiff made encroachment in the year 1983 only, and that soon thereafter a report was made against him by the Patwari and on the basis of that report, the Assistant Collector 2nd Grade, Rohru, proceeded to hold inquiry under Section 163 of the H.P. Land Revenue Act, and on the conclusion of such inquiry, he passed the order of ejectment of the plaintiff-respondent. Jurisdiction of the Court was alleged to be barred under Section 171 of the H.P. Land Revenue Act. Suit was alleged to be bad for non-joinder of the residents of the village in which the land is situate because in the revenue papers it is the residents of the village who are shown to be in possession. Plaint was alleged to be liable to be rejected on account of non-service of notice under Section 80 CPC. Objection with respect to the valuation of the suit for the purposes of court fees and jurisdiction was also raised.

3. Trial Court gave the finding that the plaintiff and his father had not been in possession of the suit land for 30 years or more and hence, they had not acquired title. Order of the Assistant Collector 2nd Grade was held to be lawful on account of the said Collector having the jurisdiction under Section 163 of the H.P. Land Revenue Act to pass the order. Issue based on the plea of non-joinder of necessary parties, was also decided against the plaintiff. Defendant's objections that the plaint was liable to be rejected on account of non-service of notice under Section

80 CPC or the suit was not properly valued also did not find favour with the trial Court. The suit was ultimately dismissed.

4. Respondent-plaintiff went in appeal to the Court of District Judge. Reversing the findings of the trial Court on the issue pertaining to the plea of adverse possession of the respondent-plaintiff and holding that the plaintiff and his father had been in possession of the suit land for more than 30 years, the first appellate Court accepted the appeal and decreed the suit declaring the plaintiff as owner in possession of the suit land on account of his and his father having remained in hostile possession for a period of more than 30 years prior to the institution of the suit.

5. The present second appeal was admitted on the following substantial questions of law:

- “1. Whether the respondent/plaintiff has failed to prove his continuous, uninterrupted and hostile possession to the true owner over the suit property for the last more than 30 years ?
2. Whether the suit of the plaintiff/respondent is bad for non-joinder of necessary party ?
3. Whether the suit of the respondent/plaintiff is not maintainable as the Civil Court has no jurisdiction under Section 171 of the H.P. Land Revenue Act?”

6. I have heard the learned counsel for the parties and perused the record. No doubt, the respondent-plaintiff while in the witness box as PW-1 and his witnesses PW-2 Kalgi Nand, PW-3 Jawahar Lal and PW-4 Churu Ram stated that the possession of the plaintiff and his father over the suit land had been for 40 years and that there existed old apple plants which were planted by the father of the respondent-plaintiff and the age of those plants was 20-25-30-35 years, but the first appellate Court appointed a Local Commissioner to give demarcation and also to report

about the age of the plants standing on the spot, by seeking expert advice of a horticulture officer. The report is available on the record of the first appellate Court (the District Judge). As per this report, the age of the apple plants, standing on the suit land, varied from 5 to 23 years. That is to say, the youngest plant was 5 years of age and the oldest of 23 years of age, as per the said report. The report is dated 28th September, 1994. That means, the oldest plant that was found by the Local Commissioner on the spot, had been planted in the year 1971.

7. As per oral evidence of the respondent-plaintiff himself, prior to the plantation of the apple plants, the land was used for growing potatoes and peas for a period of 4-5 years. That means, the first crop was sown on the suit land some time in the year 1965 or 1966. Thus, the possession of the respondent-plaintiff and his father cannot be said to have commenced prior to 1965. The suit was filed in the year 1989 or say about 24 years after the commencement of the hostile possession of the respondent-plaintiff. Limitation, as per Article 112 of the Limitation Act, is 30 years for filing a suit by the State to recover possession of immovable property belonging to it. That means, for setting up the plea of adverse possession against the State, one has to be in hostile possession, with all essential ingredients of adverse possession, for a period of 30 years. This apart, the proceedings for the ejectment of the respondent-plaintiff were started in the year 1983, and therefore, he cannot claim adverse possession beyond the date of initiation of those proceedings. In other words, the length of the period of alleged adverse possession of the plaintiff is to be counted upto the date of the initiation of such proceedings.

8. In view of the above stated position, substantial question of law No.1 is answered in favour of the appellant-defendant.

9. No submissions have been made with respect to the substantial questions of law No.2 and 3 on behalf of the appellant. Therefore, both these questions are answered against the appellant-defendant.

10. In view of the findings on substantial question of law No.1, the appeal is accepted and the judgment and decree of the first appellate Court are set aside and those of the trial Court restored and affirmed.

May 31, 2007
(ss)

(Surjit Singh)
Judge