

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 379 of 2001.

Judgment reserved on 19.6.2007.

Date of Decision: 29th June 2007

Shri Mohan Singh

.....Petitioner.

Versus

State of H.P.

.....Respondent.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. Rajan Dewan, Addl. Advocate General.

Dev Darshan Sud, Judge.

The petitioner is the plaintiff who preferred a suit in the Court of learned Sub Judge Jubbal, against the order passed by the Assistant Collector under Section 163 (3) of the H.P. Land Revenue Act (hereinafter referred to as “the Act”). The petitioner had alleged that the Collector had not followed the procedure prescribed by Section 163 (3) of the Act i.e. the case had to be treated as if the Collector was exercising the powers of a Civil Court. The learned Trial Court by its order dated

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

16.11.2000 held that the remedy open to the petitioner was by way of an appeal as provided under Section 163 (5) of the Act and not by way of the present suit. The plaint was ordered to be returned to the petitioner.

An appeal was preferred before the Additional District Judge Shimla, Circuit at Rohru challenging the order of the learned Trial Court. This appeal has also been dismissed.

Being aggrieved by the order returning the plaint to the petitioner and the finding of the learned Trial Court that the Civil Court has no jurisdiction in the matter, the petitioner is in revision before this Court.

I have heard learned counsel for the parties and have gone through the record. Section 163 (3) of the Act provides that where a question of title or adverse possession is raised, a Revenue Officer not below the rank of Assistant Collector Ist Grade has to determine the controversy as if it were a Civil Court and will exercise all such powers as are exercisable by a Civil Court. In other words, the matter is to be treated as a suit having been filed on the original side. Sub section (4) postulates that for determination of the question of title etc. the Revenue Officers will follow the same procedure as is applicable to the trial of a Civil Court and that a decree etc shall be drawn as provided by the Code of Civil Procedure. These provisions are mandatory. Sub Section (5) grants a right to a party to appeal from the decree of the Revenue Court to the District Judge as if the decree were a decree of the Subordinate Judge and Sub Section (6) vests a right in a party to file an appeal in the High Court against the judgment of the District Judge. The point which have been

raised in the suit can very well form the ground of appeal before the learned District Judge in appeal under sub Section (5) of Section 163 of the Act. Questions regarding jurisdiction etc can be determined by the learned District Judge. In these circumstances I do not find any irregular or illegal exercise of jurisdiction of the learned Courts below. This Revision Petition is accordingly dismissed with the following directions:-

1. That the petitioner who was the plaintiff before the learned Trial Court can file an appeal before the learned District Judge in terms of Section 163 (5) of the H.P. Land Revenue Act. The question of limitation will not be raised to non suit the petitioner.
2. Till the appeal is disposed of, the petitioner will not be dispossessed from the land in dispute.
3. Parties will appear before the Ld. Distt. Judge on 30th July, 2007, who will dispose of this appeal expeditiously.

There shall be no order as to costs.

29th June, 2007.
(cm)

(Dev Darshan Sud),
Judge.