

IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH, SHIMLA.

RSA No. 315 of 1995.

Date of decision 29.2.2008.

Jawala Ram ...Appellant.

Versus

Dayal Respondent.

Coram:

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

Whether approved for reporting? No.

For the appellant Shri Ramakant Sharma, Advocate
 alongwith Ms. Devyani Sharma,
 Advocate.

For the respondent Mr. Naresh Kaul, Advocate.

Dev Darshan Sud, J. (Oral).

This is the defendant's appeal against the judgment and decree of learned Additional District Judge, Mandi, affirming the judgment and decree passed by the learned trial Court granting a decree for possession of the suit property. An appeal filed by the defendant- appellant proved unsuccessful. The appeal was admitted by this Court on 19.8.1996 but no

Whether Reporters of Local Papers are allowed to see the judgment? Yes.

question of law was specified on which the appeal would be heard. After hearing the learned counsel for the parties, question No. 5 was considered and allowed to be urged as a question of law requiring determination by this Court. The facts of the case need not detain this Court, as a bare reading of the judgment of the learned District Judge shows that it is in breach of the duty imposed upon the appellate Court under Section 96 of the Code of Civil Procedure. Even if the appellate Court was to concur with the findings arrived at by the learned trial Court, it should have at least assigned reasons for dismissal of the appeal. It is by now well settled that the appellate Court is the final fact finding Court and that it is mandatory for it to consider the points of law and fact urged. (See State of Rajasthan v. Harphool Singh (Dead) through his LRs, (2000) 5 SCC 652; Madhukar and others v. Sangram and others, (2001) 4 SCC 756; Madan Lal (dead) by LRs. And others v. Yoga Bai (Dead) by LRs, (2003) 5 SCC 89 and H.K.N.Swami v.Irshad Basith (Dead) by LRs., (2005) 10 SCC 243).

The impugned judgment shows that the Additional District Judge has merely affirmed the

findings without in any manner addressing the points urged before it or the principles of law in support of the rival contentions of the parties. Expressing agreement and affirmance without assigning reasons is arbitrary and is not countenanced by law. Such acceptance/affirmance of findings arrived by assigning clear and cogent reasons is a mandatory and statutory duty cast on the Court of law.

In the circumstances, this appeal is accepted and the judgment and decree of the appellate Court is quashed and set aside. A direction is issued that the learned District Judge shall readmit the appeal and dispose it of in accordance with law. Parties shall appear before the learned District Judge, Mandi on 27.3.2008. It is also ordered that since the case pertains to the year 1988, it shall be disposed of on or before 31.12.2008. There shall be no order as to costs.

February 29, 2008 (PC) .

(Dev Darshan Sud) , J.