

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 98 of 2000

Decided on: 30.7.2010

Mohammed AliAppellant.

Versus

Bharti ChauhanRespondent.

Coram:

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

Whether approved for reporting? No.

For the appellant: Mr.Tara Singh Chauhan, Advocate.

For the respondent: Mr.Karan Singh Kanwar, Advocate.

V.K. Ahuja, J.(Oral) :

This is a regular second appeal filed by the appellant/plaintiff under Section 100 of the CPC against the judgment and decree, dated 29.12.1998, passed by the learned District Judge, Sirmaur at Nahan, H.P., vide which he affirmed the findings of the learned Sub Judge, Sirmaur at Nahan, dated 25.7.1998, in respect of the land comprised in Khasra No.1309. However, in regard to Khasra No.1308, the decree passed by the learned trial Court was modified and instead of granting the relief of declaration, the suit of the plaintiff was only decreed for permanent injunction.

2. Briefly stated the facts of the case are that the appellant, hereinafter also referred to as the plaintiff, filed a suit for permanent injunction as against the respondent, hereinafter referred to as the defendant.

Whether reporters of local papers may be allowed to see the judgment? Yes.

The suit was filed in regard to Khasra Nos.1308 measuring 10.50 square meters and Khasra Nio.1309 measuring 66.23 square meters. It was alleged that the land in suit is coming in continuous, peaceful and uninterrupted possession of the plaintiff for the last 58 years as owner in possession. It was alleged that the defendant has no concern with the suit land and since he has started causing illegal interference and is threatening to demolish the house and latrine of the plaintiff over the suit land, hence the suit filed by the plaintiff.

3. Defendant, in his written statement, admitted that the plaintiff was recorded in possession of the land comprised in Khasra No.1308, however, he pleaded that the plaintiff has no right, title or interest in the remaining land comprised in Khasra No.1309. He also alleged that he had purchased 7/24th share in Khata Khatauni No.136/248 to 253 and as such he has a better title than the plaintiff. He denied that the plaintiff was in continuous, peaceful and uninterrupted possession for the last more than 58 years. He also pleaded that since the plaintiff is in unauthorized occupation of the land measuring 10.50 square meters, he reserves his right to file a suit for possession against the plaintiff.

4. On the pleadings of the parties, the following issues were settled by the learned trial Court:

- "1. Whether the plaintiff has become owner of the suit land by virtue of adverse possession? OPP
2. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction as prayed for? OPP

3. *Whether the suit is bad for non-joinder of necessary parties? OPD*
4. *Whether the plaintiff has no cause of action? OPD*
5. *Whether the suit is hit by the provisions of Section 41 of the Specific Relief Act? OPD*
6. *Whether the defendant is entitled to special cost under S.35-A C.P.C.? OPD*
7. *Relief."*

5. On appeal, the learned Appellate Court affirmed the findings of the learned trial Court decreeing the suit in regard to Khasra No.1309. However, in regard to Khasra No.1308, the decree passed by the learned trial Court was modified and instead of granting the relief of declaration that the plaintiff has become the owner of the land by way of adverse possession, the suit of the plaintiff was decreed only for permanent injunction restraining the defendant from interfering in the land in suit except by dispossessing the plaintiff in due process of law.

6. I have heard the learned counsel for the parties and have gone through the record of the case.

7. Three substantial questions of law were framed by the appellant at the time of filing of the appeal. However, the appeal was admitted only on the following substantial question of law:

"Whether the findings are vitiated, because of wrong appreciation of Ex.PW2, Ex.PW3 and statements of witnesses PW2, DW1 and DW3?"

8. On appraisal of the record of the case, it is clear that the appeal was not admitted for hearing on the substantial question that the plaintiff had become

owner of the suit property by way of adverse possession or that the findings in regard to Khasra No.1309 are incorrect. The learned courts below have come to the conclusion that the defendant was recorded in possession of the suit land as a co-owner alongwith State of H.P. and in the absence of the other co-owners or the State of H.P. having been impleaded as a party, no relief of adverse possession and declaration in regard to Khasra No.1309 could have been granted. In regard to Khasra No.1308, a reference can be made to the revenue record, copy of the jamabandi Ext.P-7 for the year 1987-88, and Ext.D-2 copy of Missal Hakiat, which show that the constructed portion i.e. Khoka of Mohammed Ali, who has also been recorded in possession, exists over Khasra No.1308 and Khasra No.1309 was vacant. Therefore, no adverse possession could have been claimed over the vacant land and in so far as the findings in regard to Khasra No.1309 are concerned, they were rightly affirmed by the learned Appellate Court. In so far as Khasra No.1308 is concerned, there is a reference to a structure i.e. *Gair Mumkin Godam Kachcha* over this khasra number. Once the plaintiff had not impleaded the other co-owners including the State of H.P. as a party in the suit, the relief of declaration could not have been granted in favour of the plaintiff in regard to this khasra number. This Court had admitted the present appeal on the substantial question of law as to whether statements of PW-2, DW-1 and DW-3, namely, Azimudin, Kashmir Chand and Randhir Singh, respectively, were wrongly appreciated by

the courts below. A perusal of the statements of PW-2, DW-1 and DW-3 shows that there has not been any wrong appreciation of evidence by the Court and no such observations could be pointed where the evidence of these witnesses was not correctly appreciated by the courts below. The learned Appellate Court has rightly modified the decree passed by the learned trial Court and has rightly held that no relief could be granted in regard to Khasra No.1308 in the absence of other co-owners, including the State of H.P., having been brought on record as party respondent and thus has rightly granted the relief of permanent injunction qua Khasra No.1308 instead of granting the declaration that the plaintiff has become owner by way of adverse possession.

9. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant which is dismissed. However, the parties are left to bear their own costs.

July 30, 2010.
(TILAK)

(V.K. Ahuja),
Judge.