

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Suit No. 4 of 2003

Judgment Reserved on : 12.8.2010

Date of Decision : 29.10.2010

Anand Swaroop & ors.

...Plaintiffs.

Versus

Keshav Ram & Ors.

...Defendants.

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting ?¹ Yes

For the Plaintiffs : Mr. Ramakant Sharma, Advocate.

For the Defendants : Mr. P.C.Sharma, Advocate.

Kuldeep Singh, Judge

Plaintiff Anand Swaroop has filed suit for declaration declaring him to be owner in possession with respect to land and property comprised in Khasra Nos. 94 to 100 vide jamabandi 1997-98 measuring 2 bighas 18 biswas mauza Khalini Pargana Jhajot Kasumpti, Tehsil and District Shimla with consequential relief of permanent prohibitory injunction restraining the defendants from interfering in any manner in possession of the plaintiff over land comprised in Khasra Nos. 95, 97 measuring 2 bighas 5 biswas mauza Khalini, Pargana Jhajot Kasumpti, Tehsil and District Shimla.

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¹ Whether reporters of Local Papers may be allowed to see the Judgment ? yes

2. The pleaded case of Anand Swaroop plaintiff is that he is owner in possession of land comprised in the aforesaid khasra numbers 94 to 100 measuring 2 bighas 18 biswas. The land comprised in Khasra Nos. 98, 100 has come under the road. The land comprised in khasra Nos. 99, 94 and 96 is owned and possessed by plaintiff but defendants 1, 2 are claiming possession on the basis of alleged tenancy which is disputed by plaintiff, a case in this regard is pending before Commissioner. The land comprised in khasra Nos. 95, 97 measuring 2 bighas 5 biswas is owned and possessed by plaintiff. It has been pleaded that some proceedings are pending before revenue courts. The Assistant Collector 1st Grade, Shimla vide order dated 7.5.2002 has held that defendants No.1, 2 be shown as non-occupancy tenants over khasra Nos. 273/99 and 94 measuring 4 biswas, their status as tenant in upper floor of the building will continue subject to the provisions of H.P. Urban Rent Control Act. The land comprised in Khasra Nos. 95, 97 measuring 2 bighas 5 biswas was ordered to be recorded in the names of successors in interest of Shiv Narain and Kewal Krishan.

3. The plaintiff has purchased share of Ramnik Kumar S/o Kewal Krishan measuring 1 bigha 5 biswas vide registered sale deed on 26.10.1999. The double storeyed house owned by Pushpa has also been purchased by plaintiff on 27.11.1999. The share of Shiv Narain alias Sat Narain has been inherited by plaintiff by way of will dated 22.10.1998 of late Smt. Sushila in favour of plaintiff. The mutations have already been attested in favour of plaintiff on the basis of aforesaid transactions. The possession was handed over to plaintiff who is in possession thereof.

4. The defendants No.1 & 2 have filed a suit against plaintiff and Ramnik Kumar for declaration that defendants No.1 & 2 have become owners of land comprised in khasra Nos. 95, 97 measuring 2 bighas 5 biswas. The land comprised in khasra Nos. 98, 99, 94, 96 and 100 measuring 13 biswas be declared to be possessed by defendants No.1 and 2 as non-occupancy tenants. The plaintiff has contested that suit and is pending. The interim application filed by defendants No.1 & 2 in that suit was dismissed, order was upheld in appeal and thereafter in Civil Revision No. 326/2000 on 24.4.2001 by this Court. The Assistant Collector 1st Grade, Shimla has passed the aforesaid order dated 7.5.2002 after the judgment dated 24.4.2001 of this Court in Civil Revision No. 326/2000. The plaintiff has assailed the order dated 7.5.2002 before the Commissioner. The defendants No.1 and 2 have also assailed the order dated 7.5.2002.

5. The defendants having failed to establish their possession and taking advantage of the absence of the plaintiff tried to interfere in the peaceful possession of the plaintiff on the suit land. The boundaries were fixed on 6.1.2000 after demarcation at the spot but the defendants by removing the fence tried to interfere in the possession of the plaintiff and an FIR was lodged. The defendants again tried to interfere in the peaceful possession of the plaintiff on the suit land and another FIR was lodged on 27.8.2000. On 21.1.2003 the defendants again tried to interfere in the possession of the plaintiff on the suit land for which report was lodged with the police on 21.1.2003. On these averments, the suit was filed.

6. The suit was contested by defendants No.1 to 4 by filing written statement in which they have taken preliminary objections that defendants No.1 & 2 are non-occupancy tenants of the land in dispute, they are in possession of the suit land since 1970. It has been alleged that one Smt. Chankri Devi was in fact non-occupancy tenant of land in dispute since 1950 under one Kishori Lal father of Sat Narain and Kewal Krishan. There is a dispute between landlord and tenant. In view of law laid down in **Chuhniya Devi Vs. Jindu Ram, 1991 (1) SLC 223** this Court has no jurisdiction to try the suit. It has been alleged that similar suit is pending between the parties in the Court of Sub Judge (II), Shimla. The plaintiff is estopped from filing the present suit in this court on the same cause of action. The Financial Commissioner on 26.2.2000 has set-aside the order dated 14.12.1998 passed by Commissioner. Similarly, order dated 28.6.1995 passed by A.C.2nd Grade on mutation No. 117 and order dated 10.6.1996 passed by Sub Divisional Collector in appeal have also been set-aside. The revenue entries changed from 1995 to 2000 were without jurisdiction, illegal.

7. On merits, it has been alleged that Smt. Chankri Devi was non-occupancy tenant under Kishori Lal. Smt. Chankri Devi died in the year 1972, she had executed a will in favour of defendants No.1 and 2 relinquishing her tenancy rights in favour of defendants No.1, 2. The defendants No.1 and 2 are coming in possession of the suit land since 1970. The defendants are in possession of the suit land as non-occupancy tenants. Sat Narain and Kewal Krishan were not in possession of the suit land and residential house. Ramnik Kumar S/o Kewal Krishan could not

transfer a better title to Anand Swaroop plaintiff. Pushpa Behal handed over the possession of the suit land and house to defendants No.1 and 2. Hence, the sale effected by Pushpa in favour of Anand Swaroop plaintiff is void and ab initio. The defendants No.1 and 2 are residing in the premises therefore, suit for declaration and permanent prohibitory injunction in the present form is not maintainable. It has been denied that plaintiff had purchased the share of Ramnik Kumar and Pushpa. The will of Sushila relied by plaintiff is forged document. She died before her husband Sat Narain. The defendants have denied the demarcation carried out on the spot. Sat Narain and Kewal Krishan were conferred proprietary rights in the year 1975. In these circumstances, the plaintiffs could not have purchased the property from Ramnik Kumar and Pushpa Behl, such sales were against the express provisions of statute where there is a bar for transfer of land ownership which has been acquired under the H.P.Tenancy and Land Reforms Act.

8. It has been alleged that on 13.7.1964 Sat Narain and Kewal Krishan had executed an agreement with Smt. Chankri Devi that she would continue to be in possession as Gair Morrusi tenant under the occupancy tenant. Sat Narain and Kewal Krishan acquired proprietary rights in the year 1975. In the suit filed by Smt. Pushpa Behal against defendants No.1, 2 in the year 1993, Smt. Pushpa Behal has stated that her mother Smt. Chankri was in possession of the land as non occupancy tenant and that after her death she was entitled to inherit the tenancy. Smt. Pushpa Behal, Sat Narain and Kewal Krishan were not in actual physical possession of the property

involved in the present suit on the date when sales took place in favour of plaintiff. The sales made by Ramnik Kumar and Pushpa Behal in favour of the plaintiff were sham transactions and do not confer any title on plaintiff. The defendants are in actual physical possession of the suit property on the spot.

9. The defendants No.1 and 2 were conferred proprietary rights by virtue of mutation No. 117 in the year 1983. Sat Narain and Kewal Krishan filed an appeal and the order of Assistant Collector 1st Grade in mutation No. 117 was set-aside. The defendants filed an appeal before the Commissioner and thereafter matter went to Financial Commissioner, who allowed the appeal on 26.2.2000 and quashed all the orders passed from 1995 till 2000. The Financial Commissioner had remanded the case back to the Assistant Collector for determining question whether the defendants No.1 and 2 were non occupancy tenants of the land or not. The Assistant Collector 1st Grade (Land Reforms Officer) after remand decided the matter on 7.5.2002 and held that defendants No.1, 2 are in possession of portion of house on the spot and therefore, they are entitled to retain possession of the house unless ousted by legal process. The order dated 7.5.2002 was assailed by defendants No.1 and 2 in appeal before the Commissioner. The plaintiff had also filed appeal against order dated 7.5.2002 before the Commissioner.

10. The defendants No.1, 2 have come in possession of the property in the year 1968. Smt. Chankri Devi had filed an application for acquisition of proprietary rights before the Assistant Collector 2nd

Grade, Kasumpti . Her application was rejected. Smt. Chankri Devi filed an appeal before the Collector and during the pendency of the appeal she died.

11. The defendants No.1 and 2 had lodged a report with the police on 29.1.2003 and have stated that their possession is being disturbed under the garb of the interim injunction order passed by the High Court. The plaintiff has suppressed material facts . he is neither agriculturist nor bonafide Himachali. He wants to take forcible possession of the suit property.

12. Satish Kumar and Luv Vij filed OMP No. 203 of 2003 for impleading them as plaintiffs on the ground that Anand Swaroop vide registered sale deeds dated 4.4.2003 and 14.6.2003 had sold entire properties to them and have put them in possession of the property except which is in illegal and unauthorized possession of defendants No.1, 2. OMP No. 203 of 2003 was allowed on 18.7.2003, Satish Kumar and Luv Vij were arrayed as plaintiffs 2, 3. Thus, Satish Kumar and Luv Vij also became plaintiffs in the suit.

13. The plaintiffs filed replication to the written statement and reiterated the stand taken in the plaint and denied the defence of defendants. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is owner in possession of the land comprised in khasra Nos. 95 and 97, measuring two bighas five biswas? ..OPP.
2. Whether the plaintiff is entitled to the injunction, as prayed for? ..OPP

3. Whether this Court has no jurisdiction to try the suit in view of the provisions of H.P.Tenancy and Land Reforms Act, as alleged? ..OPD.
4. Whether the plaintiff is estopped from filing the present suit as a similar suit on the same subject matter is pending before the learned Sub Judge-2, Shimla? ..OPD.
5. Whether the plaintiff is not entitled to any relief in view of the orders passed by the Financial Commissioner on 22nd February, 2002, setting aside the orders passed by the Assistant Collector 11nd Grade, date 28th June, 1995 and Sub Divisional Collector dated 10th June, 1996? ..OPD.
6. Whether this court has no pecuniary jurisdiction to try the suit? ..OPD.
7. Whether Smt. Chankri Devi was non-occupancy tenant of the land in dispute, if so, its effect? ..OPD.
8. Whether the defendants inherited tenancy rights of Smt. Chankri Devi, as alleged, if so, its effect? ..OPD.
9. Whether the defendants are in possession of the suit property? ..OPD.
10. Relief.

14. I have heard the learned counsel for the parties and have also gone through the record. For the reasons stated hereinbelow, my issue-wise findings are as follows:-

ISSUES NO.1,2,7, 8 & 9:

The issues No.1, 2, 7, 8 and 9 can be conveniently considered collectively. PW-1 Daya Nand , Patwari Settlement has proved jamabandi for the year 1997-98 Ex.PW-1/A. PW-2 Dalip Negi, Sub Registrar(R),Shimla has proved sale deed dated 26.10.1999 Ex.PW-2/A,sale deed dated 27.11.1999 Ex.PW-2/B, sale

deed dated 4.4.2003 Ex.PW-2/C, sale deed dated 16.6.2003 Ex.PW-2/D, demarcation report Ex.PW-2/E and order dated 7.5.2002 Ex. PW-2/F. PW-6 Satish Kumar Vij has stated that he has purchased the property in dispute from Anand Swaroop vide sale deed Ex.PW-2/C. He has also stated that part of the property was purchased by him in the name of his son Luv Vij vide Ex.PW-2/D. He is in possession of the property after purchase. Electricity meter was got installed by him in the property in dispute vide Ex.PW-4/A. He obtained gas connection in the name of his son on 19.7.2003 vide Ex.PW-5/A and Ex.PW-5/B. The defendants are threatening to interfere in their possession. He has denied that Keshav Ram and Ram Piari are in possession of the said property. The plaintiffs have also placed on record copy of FIR No.20 of 2000 dated 3.2.2000 Ex.PW-7/A and another copy of FIR No. 158 of 2000 dated 27.8.2000 Ex.PW-7/B. The defendants have placed on record certified copy of plaint in civil suit No. 139-1 of 1993 Smt. Pushpa Behal Vs. Smt. Ram Pyari and certified copy of plaint in Civil Suit No. 26/1 of 2000 Keshav Ram Verma etc. vs. Anand Swaroop etc. These documents without proof can be read against defendants in view of **M/s Rudnap Export-Import vs. Eastern Associates Co. and others AIR 1984 Delhi 20.**

15. In jamabandi for the year 1997-1998 Ex.PW-1/A Sat Narain alias Shiv Narain and Kewal Krishan have been shown owners in possession of land measuring 2 bighas and 5 biswas comprised in khasra Nos. 95 and 97. Sat Narain alias Shiv Narain are shown owners of land comprised in khasra No. 273/99, 94 but Keshav Ram and Ram Piari in equal share have been shown non-

occupancy tenants on Khasra No. 273/99 and khasra No. 94. The nature of khasra No. 273/99 has been shown courtyard of the house whereas khasra No. 94 has been shown Bakhal Aval. Ramnik Kumar S/o Kewal Krishan vide sale deed Ex.PW-2/A dated 21.10.1999 has sold to Anand Swaroop his half share in land measuring 2 bighas 9 biswas as per jamabandi 1997-98. The plaint in Civil Suit No. 139-1 of 1993 indicates that Pushpa Behal had purchased house built on Khasra No. 96 from Sat Narain and Kewal Krishan on 1.11.1991, Pushpa Behal has sold khasra No. 96 measuring 3 biswas to Anand Swaroop vide sale deed dated 27.11.1999 Ex.PW-2/B. Anand Swaroop vide sale deed dated 4.6.2003 Ex.PW-2/C has sold khasra No. 95 and 97 measuring 2 bighas 5 biswas to Satish Kumar. Anand Swaroop vide sale deed dated 14.6.2003 Ex.PW-2/D has sold khasra No. 96 measuring 3 biswas and khasra No. 273/99 measuring 4 biswas to Luv Vij. It is the case of the plaintiffs that Anand Swaroop has also inherited share of Shiv Narain alias Sat Narain on the basis of Will dated 22.10.1998 of Smt. Sushila widow of Shiv Narain. The defendants have denied the execution of the Will in favour of Anand Swaroop on the ground that Sat Narain had died in the year 1994 whereas Sushila died before the death of Sat Narain.

16. DW-2 Ramesh Chand posted in the office of Sub Registrar, Civil Lines Zone Delhi, on the basis of record has stated that as per entry No. 7175 at page 194 of the Register pertaining to the deaths, Smt. Satya Bhanwa died on 30.10.1998 and the registration of the fact of her death was done on 31.10.1998. Initially the name of deceased was written as Satya Bhanwa, lateron a

correction was made and a note was recorded in columns No. 16 to 20 that instead of Satya Bhanwa, the name of deceased be recorded as Sushila. In cross-examination he has stated that an application was moved in the year 1998 for correction of the name of the deceased and the order was passed on the application. The defendants have questioned the Will of Sushila in favour of Anand Swaroop on the ground that Sushila had died prior to death of Sat Narain, who died in the year 1994. The Will of Smt. Sushila in favour of Anand Swaroop has not been denied on any other ground. The statement of DW-2 has proved that Sushila had died on 30.10.1998. It is not the case of the defendants that in absence of Will of Sushila the estate of Sushila will come to them by way of inheritance. The defendants have no locus standi to challenge the Will of Sushila in favour of Anand Swaroop. The defendants however have locus standi to establish their right over the property available to them in law but by not challenging the Will of Sushila in favour of Anand Swaroop.

17. DW-1 Keshav Ram Verma has stated that Sat Narain alias Shiv Narain and Kewal Krishan were occupancy tenants. The owner of the land was State. In the year 1975 ownership rights which vested in the State earlier were transferred in favour of Sat Narain and Kewal Krishan. Thus, DW-1 in no uncertain term has admitted that in the year 1975 Sat Narain and Kewal Krishan were owners of the suit land. On the basis of aforesaid sale deeds and Will of Sushila, the plaintiffs have proved their title and ownership over the suit land. The land comprised in khasra Nos. 98 and 100 according to the plaintiffs has come under the road.

18. The defendants have questioned the legality of the sale deeds in favour of Anand Swaroop on the ground that his predecessor-in-interests had acquired proprietary rights under the H.P.Tenancy and Land Reforms Act and therefore, they could not transfer the land acquired by them under the said Act for 20 years. The defendant No.1 Keshav Ram who appeared as DW-1 has stated that proprietary rights were conferred in favour of Sat Narain alias Shiv Narain and Kewal Krishan in the year 1975. Therefore, according to defendants till 1995 the said property could not have been transferred by way of sale in favour of Anand Swaroop. The sale deeds Ex.PW-2/A and Ex.PW-2/B are of the year 1999, therefore, defendants cannot take benefit of such bar, if any, as claimed by them. The defendants have also stated that the said bar was extended to 30 years, but no such bar was pointed out from record at the time of hearing.

19. It is also the pleaded case of the defendants that Kewal Krishan had executed an agreement with Smt. Chankri Devi on 13.7.1964 that she was in possession of the suit land as non-occupancy tenant and had been paying Rs.60/- half yearly theka to him, but no such agreement has been proved. The defendants have also pleaded that Smt. Chankri Devi had filed an application for acquisition of proprietary rights of the suit land on the basis of her tenancy before the Assistant Collector 2nd Grade, Kasumpti but her application was rejected. Smt. Chankri Devi filed an appeal before Collector, Mahasu and during the pendency of the appeal she died. DW-1 Keshav Ram Verma has stated that the appeal filed by Smt. Chankri Devi had abated on account of her death, hence alleged

tenancy of Smt. Chankri Devi came to an end when her claim of tenancy was rejected by Assistant Collector and appeal filed by her had abated on account of her death in the year 1972.

20. It is the case of the defendants that proprietary rights were conferred in favour of defendants No.1 and 2 vide mutation No. 117 dated 24.3.1983 under Section 104 of the H.P.Tenancy and Land Reforms Act, 1972. The mutation order dated 24.3.1983 went upto the Financial Commissioner in Revenue Revision No. 324/1998. The Financial Commissioner vide order dated 26.2.2000 remanded the case to Assistant Collector 1st Grade i.e. Collector Shimla (Rural) for fresh inquiry in the matter to determine the factum of tenancy between Keshav Ram Verma, Smt. Ram Piari and Ramnik Kumar. Anand Swaroop has purchased the share of Ramnik Kumar vide sale deed Ex. PW-2/A. The Assistant Collector, 1st Grade, Shimla (Collector) Shimla (Rural) vide order dated 7.5.2002 Ex.PW-2/F has held that Keshav Ram Verma and Ram Piari be shown in revenue records as non-occupancy tenants in land comprised in khasra No. 273/99 and khasra No. 94 measuring 4 biswas only, their status as tenants in the upper floor of the building will continue subject to provision of the H.P.Urban Rent Control Act. The rest of the land comprised in khasra Nos. 95 and 97, Kitta 2 measuring 1 biswa 2-4 bighas respectively be recorded in the names of successors in interest of Sat Narain alias Shiv Narain and Kewal Krishan. The order dated 7.5.2002 has been set-aside by the Commissioner vide order dated 14.1.2005 Ex.D-10 and the case has been remanded back to the Assistant Collector 1st Grade i.e. Collector Shimla (Rural) to decide the case afresh in accordance

with law. It has been stated by the learned counsel for the parties that the case is still pending before the Assistant Collector 1st Grade (Collector) Shimla (Rural).

21. The defendants have taken different stands with respect to their claim of tenancy over the suit land. In the first instance, the defendants have projected the case that Smt. Chankri Devi mother of defendant No.2 was non-occupancy tenant under Kishori Lal since 1950. They have pleaded that in the year 1964 an agreement was executed in between Kishori Lal and Smt. Chankri Devi regarding the tenancy. It is also the case of the defendants that Smt. Chankri Devi had relinquished her tenancy rights in favour of defendants No.1 and 2 by virtue of Will and thus, the defendants No.1 and 2 came in possession of suit property in the year 1968. It is also the case of the defendants that Smt. Chankri Devi had applied for acquisition of proprietary rights in her favour but her application was rejected. Smt. Chankri Devi filed an appeal before the Collector, but during the pendency of the appeal she died.

22. The tenancy initially is a creation of contract but no such contract has been pleaded by defendants vide which tenancy was created in favour of Smt. Chankri Devi in the year 1950. DW-6 Tikka Ram Sharma, Criminal Court Ahlmad Court No.2, Shimla has placed on record some receipts/documents Ex.DW-6/1 to Ex.DW-6/10, but these receipts/documents have not been proved, hence cannot be relied in evidence in favour of defendants. It is the case of the defendants themselves that Smt. Chankri Devi had applied for acquisition of proprietary rights being the tenant on the suit land but her application was rejected by Assistant Collector 2nd Grade,

Kasumpti. She filed an appeal and during the pendency of the appeal, she died in the year 1972. It is not the case of the defendants that Assistant Collector 2nd Grade, Kasumpti had no jurisdiction to reject the claim of tenancy of Smt. Chankri Devi on the suit land. Once Smt. Chankri Devi was not found to be a tenant on the suit land by Assistant Collector, 2nd Grade, then there is no question of her relinquishing her alleged tenancy right in favour of defendants No.1 and 2 by virtue of Will, no such Will of Smt. Chankri Devi has been proved on record.

23. DW-1 Keshav Ram Verma has stated that after the conferment of ownership rights upon Sat Narain alias Shiv Narain and Kewal Krishan they (DW-1 and defendant No.2) were recorded as non-occupancy tenants on 10.10.1976. Here again the entry of non-occupancy tenants of defendants No.1 and 2 on 10.10.1976 as claimed by DW-1 is without any foundation for more than one reason. The defendants No.1 and 2 are not claiming to be non-occupancy tenants directly under Kishori Lal or Sat Narain alias Shiv Narain and Kewal Krishan, nor they have pleaded any contract of tenancy with Kishori Lal, Sat Narain and Kewal Krishan. The defendants No.1 and 2 are claiming non-occupancy tenancy on the ground that Smt. Chankri Devi had allegedly relinquished her tenancy of the suit land in their favour through Will. The defendants themselves have pleaded that the claim of tenancy of Smt. Chankri Devi on the suit land was not accepted by Assistant Collector 2nd Grade, Kasumpti, therefore, there is no question of creation of tenancy in favour of defendants No.1 and 2 by Smt. Chankri Devi through relinquishment on the basis of Will. The defendants No.1

and 2 could not acquire any right over the suit property on the basis of Will of Smt. Chankri Devi which she had not in the suit property. Moreover, the alleged Will has not been proved. Thus, seen from any angle, the defendants have not proved their tenancy over the suit land.

24. The plaintiffs have proved their title over the suit property on the basis of sale deeds Ex.PW-2/A, Ex.PW-2/B, Will of Smt. Sushila in favour of Anand Swaroop and sale deeds Ex. PW-2/C and Ex.PW-2/D. The plaintiffs have proved their title on the suit property more particularly khasra Nos. 95, 97 excluding the property which has been acquired by the State and has come under the road.

25. PW-6 Satish Kumar Vij has stated that defendants are threatening to interfere in their possession. He has denied the possession of the defendants on the suit land. FIR Ex.PW-7/A and another FIR Ex.PW-7/B have been placed on record. The defendants are claiming possession over the suit property and therefore, no other material is required to prove the threatened acts of defendants over the suit property.

26. The learned counsel for the defendants has stated that Anand Swaroop has not appeared in the witness box. He has relied **Vidhyadhar vs. Mankikrao and another AIR 1999 S C 1441** in support of his submission that where a party to the suit does not appear into the witness box and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. In the present case, PW-6 Satish Kumar Vij one of the plaintiffs has appeared in the witness box, he

has stated his case and offered himself for cross-examination. Therefore, **Vidhyadhar** (supra) is not applicable in the present case.

27. The learned counsel for the defendants has stated that mutation does not confer any title and in support of this submission he has relied some case law but reference of such case law is not necessary in view of settled law that mutation does not confer any title. However, in the present case the plaintiffs have proved their title on the suit land on the basis of sale deeds Ex.PW-2/A, Ex.PW-2/B, Will of Smt. Sushila in favour of Anand Swaroop and sale deeds Ex. PW-2/C and Ex.PW-2/D as held above.

28. The plaintiffs have placed on record jamabandi 1997-98 Ex.PW-1/A in which defendants 1, 2 are shown in possession of land comprised in khasra Nos. 273/99, 94 Kitas 2 measuring 4 biswas. The plaintiffs are claiming possession in the house situate on the suit land on the basis of receipt Ex.PW-4/A showing payment of ₹. 110/- on 18.7.2003 to H.P.State Electricity Board by Luv Vij and on the basis of Gas Connection of Indian Oil Corporation in favour of Luv Vij dated 19.7.2003 Ex.PW-5/B and receipt Ex.PW-5/A dated 19.7.2003 for cost and carriage of LPG Cylinder. But these documents have not been connected with respect to house situate on khasra Nos. 273/99, 94 nor PW-6 Satish Kumar Vij has stated that Ex.PW-4/A, Ex. PW-5/B and receipt Ex.PW-5/A are with respect to house situate on khasra Nos. 273/99, 94. Thus, it can be safely concluded that defendants 1, 2 are in possession of house situate on khasra No. 273/99, 94. Thus, issues Nos. 1, 2 are held in favour of plaintiffs, issues No. 7 & 8 are held against defendants. Issue No.9 is also held in favour of plaintiff except to the extent that

defendants 1, 2 are in possession of the house situate on khasra No. 273/99, 94.

Issues Nos. 3, 4, 5 & 6

29 The onus of issues No. 3, 4, 5 and 6 is on the defendants. The learned counsel for the defendants has submitted that in view of **Chuhniya Devi vs. Jundu Ram 1991(1) Sim.L.C.223**, this Court has no jurisdiction to try the suit. The jurisdiction of the Court is to be determined on the basis of pleadings set up in the plaint and not by the defence put forward by the defendants. In **Chuhniya Devi** (supra) one of the question for consideration before the Full Bench was whether Civil Court has jurisdiction in respect of an order of conferment of proprietary rights under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972 (for short 'Act'), which has not been assailed under the provisions of the said Act. The Full Bench has held that Civil Court has no jurisdiction to go into any question connected with the conferment of proprietary rights under Section 104 of the Act, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with.

30. The plaintiffs have not assailed in the suit any order passed under Section 104 of the Act. The Commissioner vide order dated 14.1.2005 Annexure D-10 has set-aside the order dated 7.5.2002 and remanded the case back to decide it afresh in accordance with law.. The answer given by the Full Bench in para 64 of report in **Chuhniya Devi** (supra) read with question No. (b)

referred to in para 1 of the report would show that answer given in para 64 of the report shall be read regarding conferment of proprietary right under Section 104 of the Act which has not been assailed under the Act. In other words proprietary rights conferred under Section 104 should have attained finality so as to exclude the jurisdiction of civil court. As per parties conferment of proprietary rights proceedings are still pending. The Supreme Court in **Dhulabhai etc. vs. State of Madhya Pradesh and another AIR 1969 S.C. 78** has held that exclusion of Civil Court jurisdiction is not to be readily inferred. The defendants 1, 2 have filed Civil Suit No. 26/1 of 2000 which is pending before Sub Judge-II (Civil Judge), Shimla. The defendants in preliminary objection No.2 of written statement have pleaded that “a similar suit is pending in the court of Sub Judge, II, Shimla”. These pleadings have been repeated in para 6 of written statement. It is the case of the defendants that in substance the suit filed by defendants 1, 2 is of similar nature as the present suit. In other words defendants intend to say that they can file a suit of similar nature but plaintiffs cannot file such suit in view of provisions of H.P.Tenancy and Land Reforms Act, 1972. The defendants by taking this objection are blowing hot and cold in the same breath, which cannot be permitted. Therefore, it cannot be said that this Court has no jurisdiction to try the suit merely in view of pendency of proceeding under Section 104 of the Act which has not attained finality. Issue No.3 is decided against the defendants.

31. It has been contended on behalf of the defendants that plaintiffs are estopped from filing the suit in view of the earlier civil suit filed by defendants 1, 2 and is pending in subordinate Court at

Shimla. The necessary pleadings to this effect are in preliminary objection No.2 of the written statement. The plaintiffs have not denied the filing of the earlier suit. The defendants have failed to establish how plaintiffs are estopped from filing the suit in view of earlier suit filed by defendants No.1, 2. Thus, the defendants have failed to prove that plaintiffs are estopped from filing the suit in view of the pendency of earlier suit in subordinate court at Shimla. Hence, issue No.4 is decided against the defendants.

32. There is no order of Financial Commissioner dated 22.2.2002 referred in issue No.5. On the contrary, there is order dated 26.2.2000 Ex.D-9 of Financial Commissioner in which order dated 28.6.1995 of Assistant Collector 2nd Grade and order dated 10.6.1996 of Sub Divisional Collector, Shimla (R) have been referred. The Financial Commissioner vide order dated 26.2.2000 has remanded the case back to the Assistant Collector 1st Grade i.e. Collector, Shimla (R) for afresh inquiry in order to determine the factum of tenancy between the parties under the Act.

33. After order dated 26.2.2000 Ex.D-9, the Assistant Collector vide order dated 7.5.2002 Ex.PW-2/F had held that petitioners before him be shown in revenue records as non-occupancy tenants in land comprised in khasra Nos. 273/99, 94 measuring 4 biswas only, rest of the land comprised in khasra Nos. 95 and 97 kita 2 measuring 4 biswas and 2-4 bighas respectively be recorded in the names of successors in interest of Sat Narain alias Shiv Narain and Kewal Krishan.

34. The order dated 7.5.2002 has been set-aside by the Commissioner vide order dated 14.1.2005 Ex.D-10. In these

circumstances, it cannot be said that controversy was settled completely by the order dated 26.2.2000 Ex.D-9. Hence issue No.5 is decided against the defendants.

35. The onus of issue No.6 is on the defendants. The issue No.6 is of pecuniary jurisdiction and not of improper valuation. The plaintiffs have valued the suit at ₹. 19.00 lacs for the purposes of jurisdiction, ₹. 195/- for purposes of court fee, ₹.20/- court fee has been affixed on the plaint. The defendants have taken the defence that value of the suit for declaration and injunction ought to be at 96 times of the land revenue which is Rs. 9.41 paise. Hence, the court has no jurisdiction to entertain the suit. The defendants have not denied that the market value of the suit property is not ₹.19,00 lacs.

36. The Section 7(iv) (c) of the H. P. Court Fees Act provides that in a suit for declaration and consequential relief, plaintiff shall state the amount at which he values the relief sought. The first proviso to Section 7(iv) (c) provides the minimum court fee, the second proviso provides that such value shall not be less than the value of the property calculated in the manner provided in paragraph (v) of Section 7. The second proviso and paragraph (v) of Section 7(iv) (c) do not provide any cap on the upper side on the valuation. The plaintiff in his wisdom has valued the suit for the purposes of jurisdiction ₹.19.00 lacs. It is not the case of the defendants that valuation fixed by the plaintiffs is arbitrary.

37. In **HPSEB and another vs. M/s Pashupati Spinning Mills Ltd. 2003 (2) SLC 282**, this Court has approved **M/s Arsh Casting Private Ltd. Vs. H.P.State Electricity Board and others 2000 (3) SLC 257** wherein after noticing Section 7 (iv) (c) of the H.P.Court

Fees Act, it has been held that suit should have been valued for the purposes of court fee and jurisdiction in accordance with the value of the subject matter. The issue is not of valuation but of pecuniary jurisdiction. The plaintiffs have valued the subject matter of suit for purposes of jurisdiction at ₹.19.00 lacs. Therefore, in law the plaintiffs are bound to value the suit for purposes of court fee also at ₹. 19.00 lacs. Once the value of suit for purposes of jurisdiction and court fee is found to be ₹. 19.00 lacs, therefore, this court has jurisdiction to try the suit. However, court fee of ₹. 20/- affixed on the plaint is deficient. The issue No.6 is held to the effect that the court has pecuniary jurisdiction to try the suit but plaintiffs have not affixed proper court fee on the plaint. The court fee valuation of the plaint is also ₹.19.00 lacs, the plaintiffs are bound to affix court fee by taking the value of suit for purposes of court fee ₹. 19.00 lacs.

38. In view of the above discussion, the suit of the plaintiffs is decreed, plaintiff No.1 is held owner of land comprised in aforesaid khasra No. 94, plaintiff No.2 is held owner in possession of land comprised in khasra Nos. 95, 97 Kita 2 measuring 2 bighas 5 biswas, Mohal Khalini, Tehsil and District Shimla, H.P. The plaintiff No.3 is held owner in possession of land comprised in Khasra No. 96 measuring 3 biswas, owner of land comprised in khasra No. 273/99, measuring 4 biswas, mauza Khalini, Tehsil and District Shimla, H.P. The defendants are permanently restrained from interfering in possession of plaintiff No.2 in the aforesaid khasra Nos. 95, 97. The plaintiffs are directed to make up the deficiency of court fee on the plaint within six weeks from today by affixing appropriate court fee by taking court fee value of the suit at ₹.19.00 lacs as held

above, failing which the suit shall be deemed to have been dismissed after six weeks from today without reference to the Court.

The decree sheet be drawn accordingly. No costs.

October 29, 2010.
(GR)

(Kuldip Singh),
Judge.