

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

RSA No. 438 of 2002.

Judgment reserved on: 28.5.2014.

Date of Decision: June 30, 2014

Sh.Shyam Singh.

....Appellant/plaintiff.

Vs.

Prem Singh and others.

..... Respondents/Defendants.

Coram:

Hon'ble Mr. Justice P.S.Rana, Judge.

Whether approved for reporting?yes.

For the appellants: Ms.Jyotsna Rewal Dua, Advocate.

For respondent No.1 :Mr.Ramakant Sharma, Advocate.

For respondent No.2. Mr.P.C.Sharma, Advocate.

P.S.Rana, J.

Judgment: Present appeal filed against the judgment and decree passed by learned District Judge Sirmour District at Nahan HP in Civil Appeal No. 52-CA/13 of 2001 titled Shyam Singh Vs. Prem Singh and others.

2. Brief facts of the case as pleaded are that Shyam Singh and others plaintiffs filed suit for declaration that partition order dated 4th December 1997 and the instrument of partition made in the partition case No.60 of 1993 titled Prem

Whether reporters of the Local papers are allowed to see the judgment?yes.

Singh Vs. Shyam Singh prepared by Assistant Collector Ist Grade Paonta Sahib HP is illegal and not binding upon the plaintiffs being contrary to civil decree passed by the Civil Court in Civil Suit No.16/1 of 1987 titled Gajey Singh Vs. Prem Singh which was decided on 23rd December, 1987. It is pleaded that as per compromise decree passed by Civil Court suit property situated in khasra No.33, 38 and 146 measuring 42-8 bighas and khasra No.34 and 163 measuring 17-12 bigha total immovable land measuring 60 bighas situated in Mauza Danda Tehsil Paonta Sahib District Sirmour HP was to be divided in equal shares between Gajey Singh, Prem Singh and Shyam Singh. It is further pleaded that it was decided in Civil Suit No. 16/1 of 1987 that 17-12 bighas of land situated in khasra No. 34 and 163 will be clubbed together with the land measuring 42-8 bighas comprised in Khasra No. 33, 38 and 144 and thereafter the land will be partitioned amongst three brothers i.e. Gajey Singh, Prem Singh and Shyam Singh in equal shares after maintaining their respective possession with regard to Abadi of the parties. It is further pleaded that revenue officials while effecting partition did not implement the decree passed by Civil Court on 23rd December 1987 in Civil Suit No. 16/1 of 1987 and prayer for grant of decree as mentioned in relief clause of the plaint sought.

3. Per contra written statement filed on behalf of defendant No.1 Sh Prem Singh pleaded therein that suit is not legally maintainable. It is further pleaded that Civil Court has

no jurisdiction to entertain and try the suit qua partition matters decided under HP Land Revenue Act. It is pleaded that remedy lies under HP Land Revenue Act. It is further pleaded that Civil Suit is clearly barred before the Civil Court qua partition proceedings effected under HP Land Revenue Act. It is further pleaded that aggrieved party did not file appeal against the mode of partition. It is further pleaded that no question of title was raised before the revenue officials in partition proceedings as required under HP Land Revenue Act. It is further pleaded that present suit is bad for non-joinder of necessary party. It is further pleaded that present suit has been filed in collusion with plaintiff No.1 and plaintiffs No.2 to 9. It is admitted that vide compromise decree dated 23rd December 1987 titled Gajey Singh Vs. Prem Singh and others the parties were declared owners in possession in equal shares maintaining their respective possession with regard to Abadi. It is further pleaded that after passing of the decree on dated 23rd December 1987 in Civil Suit No. 16/1 of 1987 Sh Shyam Singh plaintiff No.1 filed another Civil Suit No. 59/1 of 1993 titled Shyam Singh Vs. Gajey Singh for declaration that compromise executed between the parties in Civil Suit No.16/1 of 1987 titled Gajey Singh Vs. Shyam Singh be declared void ab-initio and that subsequent change in revenue entries on the basis of said decree be rectified. It is pleaded that Civil Suit No. 59/1 of 1993 was dismissed. It is further pleaded that thereafter appeal was filed before Additional District Judge Sirmour at Nahan i.e.

Civil Appeal No. 28-N/13 of 1995 titled Shyam Singh Vs. Gajey Singh and another and the same was also dismissed on 18.11.1997. It is further pleaded that thereafter Regular Second Appeal No. 19 of 1998 was filed before the Hon'ble High Court titled Shyam Singh Vs. Dhanvir Singh and others and the same was also dismissed by Hon'ble High Court of HP on dated 15.05.1998. It is further pleaded that plaintiff instead of filing appeal before the Hon'ble Apex Court filed the present suit in collusion with plaintiffs No. 2 to 9. It is further pleaded that partition proceedings have come to an end under HP Land Revenue Act and no injunction could be granted legally against the Assistant Collector Ist Grade who is not subordinate to the Civil Court in partition proceedings. It is further pleaded that plaintiffs have no cause of action to file the present suit and prayer for dismissal of the suit sought.

4. Per contra Rattan Singh defendant No.2 filed written statement pleaded therein that jurisdiction of Civil Court is specifically barred under Section 171 of the HP Land Revenue Act qua partition proceedings. It is further pleaded that plaintiffs have no cause of action to file present suit. It is further pleaded that decree passed on dated 23rd December 1987 in Civil Suit No. 16/1 of 1987 is not binding upon the rights of defendant No.2. It is further pleaded that grand father of defendant No.2 was the owner of the suit land and he had three sons namely Shyam Singh plaintiff No.1, Gajey Singh the father of plaintiff No. 2 to 9 and Prem Singh defendant No.1. It

is further pleaded that mother of defendant No.2 died when defendant No.2 was three months old. It is further pleaded that father of defendant No.2 re-married and left defendant No.2 with his grand father. It is further pleaded that defendant No.2 was brought up by his grand father. It is further pleaded that all the three sons were living separately from their father. It is further pleaded that grand father of defendant No.2 had given 2-17 bigha of land out of khasra No. 33 in the year 1973 to defendant No.2 and divided the remaining land among three sons. It is further pleaded that after the death of grand father defendant No.2 constructed a residential house consisting of five rooms value of which is more than Rs.3,00,000/- (Three lacs). It is further pleaded that defendant No.2 has also planted two mango trees over suit property. It is further pleaded that in case title of the defendant No.2 on the basis of permanent grant in the family settlement is found defective then in alternative defendant No.2 became owner of the suit property by way of adverse possession as defendant No.2 is in possession of the said land openly and peacefully as owner to the knowledge of true owner. Prayer for dismissal of suit sought.

5. Learned trial Court on 21st December 1999 framed the following preliminary issue:

1. Whether Civil Court has no jurisdiction in view of Section 171 of HP Land Revenue Act?. OPD
2. Relief.

6. Findings of the learned trial Court on issue No.1 was in affirmative and the learned trial Court held that Civil Court has no jurisdiction to entertain the present suit against partition proceedings under HP Land Revenue Act in view of Section 171 of the HP Land Revenue Act and rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

7. Feeling aggrieved against the decision of learned trial Court passed in Civil Suit No. 32/1 of 2001/1998 appellant filed first appeal before the learned District Judge Sirmour at Nahan. Learned District Judge Sirmour on dated 19th July, 2002 dismissed the Appeal No. 52-CA/13 of 2001 filed by the appellant on dated 19.7.2002 against judgment and decree passed in Civil Suit No.32/1 of 2001/1998.

8. Feeling aggrieved against the judgment and decree passed by the learned first appellate Court appellant filed present RSA No. 438 of 2002. Hon'ble High Court of HP on dated 4th December, 2002 framed the following substantial question of law:

Whether suit of the plaintiff-appellant as laid is within the jurisdiction of the Civil Court?

9. Court heard learned Advocate appearing on behalf of the parties at length and also perused the entire record carefully.

Findings upon substantial question of law framed by Hon'ble High Court of HP.

10. Submission of the learned Advocate appearing on behalf of the appellant that suit of declaration filed by the appellant was within the jurisdiction of the Civil Court is rejected being devoid of any force for the reason hereinafter mentioned. In the present case after careful perusal of the plaint and the written statement filed by the parties it is proved on record that plaintiff has filed suit for declaration that partition order dated 4.12.1997 and instrument of partition made in partition case titled Prem Singh Vs. Shyam Singh case number 60 of 1993 by Assistant Collector Ist Grade Paonta Sahib HP is illegal void and contrary to judgment and decree of Civil Suit No. 16/1 of 1987 titled Gajey Singh Vs. Shyam Singh. It is also proved on record that on 21st December 1999 learned trial Court framed preliminary issue and on the same day on dated 21st December 1999 there is recital in the order sheet of the learned trial Court that no evidence was to be led in the above said preliminary issue and learned trial Court fixed the case for arguments on 21st December 1999 itself. It is also proved on record that on 7th April 2001 learned Advocate submitted that he intends to file documents upon preliminary issue. The prayer of the learned Advocate was accepted and thereafter documents were tendered on 7th April, 2001 itself. It is also proved on record that plaint was rejected by the learned trial Court under Order 7 Rule 11 CPC vide separate judgment dated 7.4.2001. The Court has carefully perused the documentary evidence adduced by the parties. As per

jamabandi Ext P1 for the year 1983-84 in the column of ownership it has been specifically mentioned that Prem Singh is the owner of 1/3rd share and Shyam Singh is the owner of 2/3rd share qua khasra number 33,38 and 146 and as per jamabandi Ext P2 for the year 1993-94 placed on record qua khasra No.33, 38, 146, 34 and 163 names of Sh Gajey Singh, Sh Prem Singh and Sh Shyam Singh son of Sh Nain Singh as owners in equal shares of the suit property has been shown in compliance to judgment and decree passed in Civil Suit No. 16/1 of 1987. In the remarks column it has been recorded that vide mutation No. 751 the share of Gajey Singh devolved upon Alam Singh, Chaman Singh, Dhanvir Singh, Prithi Singh, Harnam Singh, Smt. Mohani Devi, Amba Devi, Sodha Devi and Nirmla Devi in equal shares and the mutation was sanctioned on 30th April 1996. As per document Ext P3 it is proved on record that Sh Gajey Singh filed Civil Suit No. 16/1 of 1987 for declaration that mutation No. 315 conferring ownership rights to Sh Prem Singh, Sh Shyam Singh and Gajey Singh in equal shares in suit land is illegal, malafide and fraudulent and Gajey Singh plaintiff claimed half share in suit property on the basis of Will dated 18.6.1975. It is proved on record that Civil Suit No. 16/1 of 1987 was compromised inter se parties to the extent that suit land of Khasra Number 33, 38, 144 measuring 42-8 bighas and land comprised in Khasra Number 34 and 163 measuring 17-12 bighas would be clubbed together and total land 60 bighas would be partitioned among three brothers (1) Gajey Singh (2)

Prem Singh (3) Shyam Singh in equal shares after maintaining their respective possession with regard to Abadi of the parties. There is further recital in the compromise decree executed in Civil Suit No. 16/1 of 1987 that apart from his own land measuring 17-12 bighas the plaintiff shall get 2 bighas of land from the suit land i.e. one bigha just adjoining to his own Abadi and one bigha at Paghar and there is further recital in the compromise decree that plaintiff shall also be entitled to retain his Abadi measuring 10 biswas. There is further recital in the compromise decree of the Civil Suit that party as per compromise shall get necessary compliance in the revenue record and there is further recital in the compromise that party shall abide by the compromise entered into in the Court. There is further recital in the compromise that the statements of the parties shall form part of compromise decree. It is also proved on record that thereafter Shyam Singh filed another Civil Suit No. 59/1 of 1993 titled Shyam Singh Vs. Gajey Singh for declaration that judgment and decree passed by learned Civil Judge Nahan in Civil Suit No. 16/1 of 1987/83 be declared void ab-initio and also filed suit for declaration that subsequent change in the revenue entries on the basis of said decree be also rectified. Civil Suit No. 59/1 of 1993 filed by Shyam Singh was dismissed on dated 30th January, 1995. It is also proved on record that thereafter Shyam Singh filed first Civil Appeal No.28-N/13 of 1995 titled Shyam Singh Vs. Gajey Singh and another against the judgment and decree of Civil Suit No.59/1

of 1993 and the same was dismissed by learned Additional District Judge Sirmour on dated 18th November 1997. It is proved on record that thereafter Shyam Singh filed RSA No. 19 of 1998 titled Shyam Singh Vs. Dhanbir Singh and others which was also dismissed by the Hon'ble High Court of HP on dated 15th May, 1998. It is also proved on record that thereafter again Sh Shyam Singh filed present suit for declaration whereby partition order dated 14th December 1997 and instrument of partition qua immovable property passed by the Assistant Collector Ist Grade Paonta Sahib challenged. It is proved on record that Shyam Singh also filed appeal qua partition under HP Land Revenue Act and Revenue Appeal No. 15 of 1994 titled Shyam Singh Vs. Prem Singh and others was dismissed by learned Collector Sub Division Paonta Sahib on 17.3.1997. It is well settled law that revenue officials are under legal obligation to obey the decree of Civil Court. The compromise executed inter se the parties in Civil Suit No. 16/1 of 1987 in which Gejey Singh, Prem Singh and Shyam Singh were parties has attained the stage of finality up to the level of Hon'ble High Court of HP. Even as per section 171 of HP Land Revenue Act jurisdiction of Civil Court qua partition proceedings is barred. As per section 14 of HP Land Revenue Act there is separate provisions of appeals qua partition proceedings before (1) Collector (2) Commissioner (3) Financial Commissioner.

11. In view of the above stated facts it is held that learned trial Court and learned first appellate Court have not wrongly mis-interpreted and have not mis-appreciated the evidence adduced in the present case. It is held that remedy of the appellant was to challenge the partition proceedings under Section 14 of the HP Land Revenue Act 1954 and it is held that remedy of appellant was to file execution proceedings qua consent judgment and decree passed in Civil Suit No. 16/1 of 1987. It is held that question of title is not involved in the present case qua appellant. It is held that question of title already stood settled inter se parties in Civil Suit No. 16/1 of 1987 decided on dated 23.12.1987 decided by Civil Court in compromise decree affirmed up to level of Hon'ble High Court of HP in RSA No. 19 of 1998 titled Shyam Singh Vs. Dhanvir Singh etc. qua appellant. Although plea of adverse possession took by defendant No.2 namely Rattan Singh in written statement in present case but Rattan Singh defendant No.2 did not challenge findings of learned trial Court and findings of learned first appellate Court in present case at any point of time. Hence substantial question of law is answered against the appellant. The judgment and decree of learned trial Court and learned first appellate Court are affirmed. Consequently the present appeal fails and is hereby dismissed so also the pending application(s) if any leaving the parties to bear their own costs.

June 30,2014(R)

(P.S.Rana)
Judge.

