

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.306 of 2001 alongwith Cross-Objections No.469 of 2001.

Date of Decision: 30th June, 2015.

Lachhmi Chand deceased through his L.Rs. Hari Chand and
others .. Appellants.

Versus

Rajinder Dutt and others .. Respondents.

Coram

Hon'ble Mr. Justice Dharam Chand Chaudhary, J.

Whether approved for reporting'?

For the appellants: Nemo.

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

Dharam Chand Chaudhary, J (Oral).

This judgment shall dispose of the present
appeal and also the Cross-Objections hereinabove
arising out of the judgment and decree dated 24th
April, 2001, passed by learned District Judge, Sirmaur
District at Nahan, in Civil Appeal No.52-CA/13 of

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

2000, whereby while decreeing the suit filed by the respondents herein (plaintiffs in the trial Court) partly, has restrained the appellants from causing interference with their grazing rights qua the suit land entered in Khata/Khatauni No.27/61, Khasra Nos.472, 478, 497, 528, 660, 671, 886/739 min, 890/740 and 721, measuring 44.15 Bighas, situate in village Bag Pashog, Tehsil Pachhad, District Sirmaur, however, dismissed the suit qua the remaining suit land entered in Khata/Khatauni No.32/66, Khasra No.808, measuring 94.10 Bighas, situate in village Bag Pashog, Tehsil Pachhad, District Sirmaur. Therefore, the appellants-defendants being aggrieved by the judgment and decree for permanent prohibitory injunction qua the suit land measuring 44.15 Bighas hereinabove has been passed in favour of the respondents-plaintiffs, have filed the present appeal, whereas the respondents-plaintiffs aggrieved by that part of the judgment and decree whereby the suit

filed by them qua the land measuring 94.10 Bighas has been dismissed, have preferred the Cross-Objections.

2. The appeal has been admitted on the following substantial question of law:

“Whether the civil Court has jurisdiction to entertain a dispute regarding conferment of proprietary rights under Section 104 of the H.P. Tenancy and Land Reforms Act, more so keeping in view the judgment rendered by this Court in Chuhniya Devi's case?

3. The cross-objections have also been admitted, however, without framing any substantial question(s) of law.

4. The record reveals that the appeal as and when listed on and after 5th November, 2012, till the previous date neither the appellants nor learned Counsel representing them except for 19th

December, 2012 and 16th May, 2015 had put in appearance. On 19th December, 2012 and 16th May, 2015 vice Counsel had put in appearance. The order passed on the previous date, i.e., 19th June, 2015 reads as follows:

“Appellant No. 1 Lachhmi Chand, respondent No. 4 Krishan Sarup, respondent No. 7 Vidya Dutt and respondent No. 8 Ishwar Dutt have died during the pendency of the appeal. Their legal representatives though stand substituted in cross-objections, however, not in this appeal. No steps have been taken by the appellants. There is no appearance on their behalf. In the interest of justice, list on 30th June, 2015.”

5. Irrespective of the appeal adjourned on the previous date for hearing in the interest of justice and with the expectation that someone may put in appearance on behalf of the appellants-defendants, again there is no appearance on their

behalf. The appellants-defendants have not taken any steps for substitution of legal representatives of appellant No. 1 Lachhmi Chand and respondent No.4 Krishan Sarup, respondent No.7 Vidya Dutt and respondent No.8 Ishwar Dutt, who died during the pendency of the appeal. Their legal representatives, however, have been ordered to be substituted on record of the Cross-Objections. The apex Court in **N. Jayaram Reddi and another v. The Revenue Divisional Officer and Land Acquisition Officer, Kurnool, AIR 1979 Supreme Court, 1393** has held that where there are cross appeals against the same judgment and decree and if legal representatives are before the Court in either of the appeals, it is immaterial and irrelevant if they are not impleaded as legal representatives of the deceased party in another capacity in other appeal and as per ratio of this judgment when legal representatives of a person appellant in one appeal, whereas, respondent in the

cross appeal are substituted in the appeal he filed as appellant, it is not necessary to substitute his legal representatives in the cross appeals, in which he is respondent because they being on record of one of the appeal have to be treated on record of the cross appeal before the same Court hearing both appeals together. This judgment reads as follow:

“42. Now, if the discernible principle underlying Rules 3 and 4 of Order 22 is that the legal representatives of the deceased likely to be affected one way or the other by the decision in appeal must be before the Court and must be heard before a decision affecting their interests is recorded, it would stand fully vindicated when in cross-appeals a party occupying the position of an appellant in one appeal and respondent in the other dies and his legal representatives are brought on record in the appeal in which he is the appellant and not in the other appeal wherein he is a respondent because the subject-matter of both the appeals being the decree under attack, they have an opportunity to support the decree in their

favour and question the correctness of the decree adverse to them. Even if they were brought on record as legal representatives of the deceased in his capacity as respondent in the cross-appeal, they could not have further advanced their case nor could they have done anything more than what they would do in their capacity as legal representatives of the deceased appellant unless they were precluded from contending that they being not on record cannot support or controvert the decree. They have thus the fullest opportunity of putting forth their grievance against and in support of the decree. Their position was not the least likely to be affected one way or the other even if they were not formally impleaded as legal representatives of the deceased in his capacity as respondent. To say that cross-appeals are independent of each other is to overlook the obvious position which parties adopt in cross-appeals is the same as interdependence of appeal and cross-objections a decision with regard to appeal would directly impinge upon the decision in cross-objections and vice versa. Indubitably the decision in one of the cross-appeals

would directly impinge upon the decision in the other because both ultimately arise from the same decree. This is really the interdependence of cross-appeals and it is impossible to distinguish cross-appeals from appeal and cross-objections. Unfortunately this interdependence was overlooked by the Madras High Court when the scope of cross-appeals arising from the same decree and appeal and cross-objections in respect of the same decree were not examined in depth in Shankaranaina Saralaya's case (AIR 1931 Mad 277). This approach is merely an extension of the principle well recognized by Courts that if legal representatives are before the Court in the given proceeding in one capacity it is immaterial and irrelevant if they are not formally impleaded as legal representatives of the deceased party in another capacity. Shorn of embellishment, when legal representatives of a deceased appellant are substituted and those very legal representatives as legal representatives of the same person occupying the position of respondent in cross-appeal are not substituted, the indisputable outcome would be that they were on record in the

connected proceeding before the same Court hearing both the matters, in one capacity though they were not described as such in their other capacity, namely, as legal representatives of the deceased respondent. To ignore this obvious position would be giving undue importance to form rather than substance. The anxiety of the Court should be whether those likely to be affected by the decision in the proceeding were before the Court having full opportunity to canvass their case. Once that is satisfied it can be safely said that the provisions contained in rules 3 and 4 of Order 22 are satisfied in a given case. To take another view would be to give an opportunity to the legal representatives of a deceased party in an appeal having had the fullest opportunity to canvass their case through the advocate of their choice appearing in cross-appeals for them and having canvassed their case and lost, to turn round and contend that they were not before the Court as legal representatives of the same person in his other capacity, namely, respondent in the cross-appeal. In other words, those legal representatives were before the Court all throughout the hearing

of the appeal as parties to the appeal and canvassed their case and were heard by their advance and they had the full opportunity to put forth whatever contentions were open to them in the appeals and to contest the contentions advanced against them by the opposite side and yet if the other view is taken that as they were not formally impleaded as legal representatives of the deceased respondent in the cross-appeal that appeal has abated, it would be wholly unjust. It is very difficult to distinguish on principle the approach of the Court in appeals and cross-objections and in cross-appeals in this behalf. No principle of law can distinguish this deviational approach. The cases which have taken the view that in cross-appeals the position is different than the one in appeal and cross-objections do not proceed on any discernible legal principle. Nor can they be explained by any demonstrable legal principle but in fact they run counter to the established legal principle."

6. Therefore, drawing support from the law laid down by the apex Court *supra*, since the legal

representatives of deceased appellant Lachhmi Chand and respondents Krishan Sarup, Vidya Dutt and Ishwar Dutt are on record of the cross objections, therefore, there is no question of abatement of the appeal and the same has to be decided on merits along with the cross-objections.

7. The appellants-defendants are aggrieved from that part of the judgment and decree passed by learned lower appellate Court whereby the suit has been partly decreed and they have been restrained from causing any interference in the grazing rights of the plaintiffs over the suit land comprised in Khata Khatauni No. 27/61, Khasra Nos. 472, 478, 497, 528, 660, 671, 886/739min, 890/740 and 721, Khas-8 measuring 44.15 Bighas. The complaint is that the conferment of proprietary rights under Section 104 of the H.P. Tenancy and Land Reforms Act is outside the domain of the Civil Courts and as such, learned lower appellate Court is not justified to

hold that the land having been vested with the State, proprietary rights qua the same could have not been conferred upon the defendants. Any such findings could have only been recorded by the competent authority under the Act and not by the Civil Court. The evidence that the proprietary rights were conferred upon the defendants by an order, which was never challenged by the plaintiffs available on record, learned lower appellate Court had no occasion to conclude that the proprietary rights qua the land measuring 44.15 Bighas was wrongly conferred upon the defendants. This is the only challenge to that part of the judgment and decree whereby the suit has been partly decreed. The substantial question of law on which the appeal has been admitted is already detailed in this judgment in para supra.

8. Now, if coming to the cross-objections, it is the plaintiffs who have preferred the same being

aggrieved and dissatisfied by that part of the judgment and decree whereby a decree for permanent prohibitory injunction qua the suit land entered in Khata Khatoni No. 32/66, Khasra No. 808 measuring 94.10 Bighas has been declined. The challenge is on the grounds *inter-alia* that both Courts below have not appreciated the evidence available on record in its right perspective and misappreciated, mis-constructed and misapplied the same. The entries in the Jamabandis relied upon by the defendants stand rebutted by the evidence produced by them, however, irrespective of that the suit is dismissed erroneously. The judgment Ext.D-X being not against few of the plaintiffs as they were not party to the suit decreed thereby is not binding on them. The suit, therefore, was wrongly dismissed while placing reliance thereon.

9. As noticed supra, the cross objections have not been admitted on any substantial question

of law. Any how, a substantial question of law can be formulated at the stage of hearing also. From the grounds raised in the memorandum of cross objections the same is to be treated to have been admitted on the following substantial question of law:

Whether both Courts below have not appreciated the facts of the case and evidence available on record in its right perspective while dismissing the suit for the relief of permanent prohibitory injunction qua the suit land entered in Khata Khatoni No. 32/66, Khasra No. 808 measuring 94.10 Bighas and on that count, the judgment and decree being perverse is not legally sustainable?

10. Now, if coming to the substantial question of law, this Court is in agreement with the findings that the proprietary rights under Section 104 of the H.P Tenancy and Land Reforms Act could have not been conferred upon the defendants, in view of the

same is vested in the State Government, recorded by learned lower appellate Court for the reason that proviso below sub-section 9 of Section 104 makes it crystal clear that the Section ibid shall not apply to the land which is either owned by or is vested in the Government before or after the commencement of the Act and leased out to any person. It is seen from the Jamabandi Ext.P-4 for the year 1955-56 that this land has been recorded as 'Shamlat', of course, in possession of Ramanand and Durga Ram through Gorkhu as tenant. This land being 'Shamlat', proprietary rights could have not been conferred upon the defendants. The law laid down by this Court in Chuhniya Devi's case is not attracted to the given facts and circumstances, because the conferment of proprietary rights upon the defendants is absolutely illegal and contrary to the provisions contained under Section 104 of the Act discussed hereinabove.

11. This Court is in agreement with the findings that conferment of proprietary rights in favour of defendants qua suit land is against the basic provisions under the Act and rather in complete departure to the provisions contained under the Act and the Rules framed thereunder recorded by learned lower appellate Court. Therefore, the Civil Court was competent to take cognizance of this aspect of the matter. Otherwise also, the entries in the Jamabandi reveal that this parcel of suit land being 'Ghasni' is not cultivable. The villagers must have been using the land in question as 'Charandh' or for collecting grass therefrom. If coming to Wazib-ul-arz, Ext. P-8, the entries therein reveal that the 'Shamlat' land in Mauza Bag Pashog is being used by the villagers for grazing their cattle. Also that, the 'Shamlat' land cannot be cultivated. There was ample evidence to show that the suit land measuring 44.15 Bighas is being used by the villagers

for grazing their cattle. The defendants have managed the conferment of proprietary rights upon them qua the same in connivance with the revenue staff and in complete departure to the provisions contained under Section 104 of the Act and the Rules framed thereunder. The defendants are, therefore, not legally justified in claiming their right, title or interest over the same in exclusion to the rights of the villagers thereon. Learned lower appellate Court, therefore, has not committed any illegality or irregularity while holding that the proprietary rights qua this parcel of the land were illegally conferred upon the defendants. The suit, therefore, has rightly been decreed qua the same for the relief of permanent prohibitory injunction restraining the defendants from causing any interference qua the grazing rights of the plaintiffs thereon. Therefore, no legal question much less what to speak of substantial question of law arise in this appeal to infer that the

judgment and decree is perverse. The appeal, therefore, deserves dismissal.

12. Now if coming to the cross objections, it is seen from the evidence as has come on record by way of Jamabandis that the suit land entered in Khata Khatauni No. 32/66, Khasra No. 808 measuring 94.10 Bighas is in the ownership and possession of the defendants. The entries in Khasra Girdwari Ext.D-1 reveal that out of the same 20 bighas has been entered as 'Banjar Kadim' and 74.10 as 'Nallah Charandh' (rivulet/pasture). The fact, however, remains that the same is in the ownership and possession of the defendants. Defendant Sham Dutt has stepped into the witness as DW-1. DW-2 Bhim Dutt, none else but one of the plaintiffs while in the witness box has stated that this parcel of suit land is in the ownership and possession of the defendants. DW-2 Bhim Dutt has been arrayed as plaintiff No. 12 in the suit. He, however, has denied any suit having

been filed. DW-3 Tusli Ram is plaintiff No. 15. He has also denied any suit having been filed against the defendants. The plaintiffs, no doubt, have examined one of them, namely Ram Sarup, plaintiff No.3 as PW-1 and in rebuttal one Shri Tulsi Ram as RPW-1. The evidence as has come on record by way of their testimony is neither sufficient nor convincing to rebut the presumption of truth attached to the entries in the revenue record. Shri Tulsi Ram, RPW-1, who as a matter of fact is son of Badmu though submits that he has filed a suit but he was not the plaintiff in the suit and rather it is Tulsi Ram son of Mahantu who has stepped into the witness box as DW-3 and stated that no suit has been filed by him. Therefore, arraying the persons as plaintiffs who have never filed the suit also render the plaintiffs' case qua the suit land doubtful.

13. Significantly, defendant No.4 Shyam Dutt had filed Civil Suit No. 28-1/1997 against few of the

plaintiffs 12 in number for seeking decree of permanent prohibitory injunction qua this very parcel of the suit land i.e. Khata/Khatauni No. 32/66, Khasra No. 808 measuring 94.10 Bighas situate in village Bag Pashog, Tehsil Pachhad, District Sirmour, H.P. It is seen that vide judgment Ext. D-X passed in the suit, the same has been decreed against the plaintiffs herein who were arrayed as defendants in that suit. The judgment Ext.D-X seems to have attained finality as it is not the case of the plaintiffs that they had preferred appeal etc. against the same. Their plea that judgment Ext. D-X does not operate re-judicata against the plaintiffs who were not arrayed as defendants in that suit, is hardly of any substance for the reason that the rights of the defendants and for that matter of the plaintiffs also including those who were not party in the previous suit qua the suit land stood settled, because while decreeing that suit plaintiff Shyam Dutt (defendant No. 4 herein) was

held joint owner in possession of the suit land. Therefore, when the defendants have been as held joint owners-in-possession of the suit land, the findings so recorded are binding to those plaintiffs also who were not party in the previous suit. In view of the claim as laid in the present suit by those plaintiffs who were defendants in that suit being similar to them was rejected in that suit by the Court, therefore, both Courts below have not committed any illegality or irregularity in dismissing the suit qua the suit land measuring 94.10 Bighas supra. There is also no question of misappreciation, misconstruction and misreading of the evidence so relied upon as well as documentary evidence produced by the parties qua this aspect of the matter. I, therefore, find no substance in the cross objections also and the same also deserve dismissal. The substantial questions of law supra are answered accordingly.

14. In view of what has been said hereinabove, this appeal and cross objections fail and the same are accordingly dismissed. Consequently, the judgment and decree passed by leaned lower appellate Court is affirmed. Pending application(s), if any, shall also stand disposed of. No orders so as to cost.

June 30, 2015.
(rc)

**(Dharam Chand Chaudhary),
Judge.**