

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 2 of 2015

Order Reserved on 11th September 2015

Date of Order 30th September 2015

Khem Chand son of late Shri Kanshi Ram & others.
....Revisionists/Plaintiffs

Versus

State of H.P. & other.
....Non-revisionists/Defendants

Coram

The Hon'ble Mr. Justice P.S. Rana, J.

Whether approved for reporting?¹ Yes.

For the Revisionists: Mr. J.L. Bhardwaj, Advocate

For the Non-revisionists: Mr. M.L. Chauhan, Additional
Advocate General with
Mr.J.S.Rana Assistant
Advocate General.

P.S. Rana, Judge.

Order:- Present civil revision petition is filed under Section 115 of Code of Civil Procedure against order dated 15.9.2014 passed by learned Civil Judge (Junior Division) Solan (H.P.) wherein learned trial Court dismissed the application filed by revisionists under Order 23 Rule 1(3)

¹ *Whether Reporters of Local Papers may be allowed to see the judgment? Yes.*

of Code of Civil Procedure for permission to withdraw civil suit No. 234/1 of 2014/04 titled Kanshi Ram and others vs. State of H.P. with liberty to file fresh suit.

Brief facts of the case

2. Brief facts of the case as pleaded are that Kanshi Ram and Nand Lal filed civil suit No. 234/1 of 2014/04 titled Kanshi Ram and other vs. State of H.P. whereby revisionists sought decree for declaration in favour of revisionists and against the non-revisionists to the effect that revisionists are owners in possession of suit land comprised in Khata No. 8 Khatauni No. 12 Khasra No. 3 min, 25 min kitas 2 measuring 34 bighas 2 biswas situated at mauza Tutuwa Hadbast No. 260 Pargana Haripur Tehsil and District Solan. Revisionists also sought relief that entry in column of owners in the name of State of H.P. is wrong illegal and not tenable and is contrary to the factual position at the spot. Revisionists also sought consequential relief of adverse possession declaring the revisionists as owners in possession of land. Revisionists also sought relief of permanent prohibitory injunction restraining the non-revisionists from interfering in peaceful possession of revisionists.

3. Non-revisionists contested the civil suit by way of filing written statement. Thereafter learned trial Court framed following issues on 5.5.2006:-

1. Whether revenue entries showing defendants as owners of suit land are wrong and illegal?OPP
2. Whether plaintiff is entitled for relief of permanent prohibitory injunction as prayed?OPP
3. Whether in the alternative plaintiffs have become owners of suit land by way of adverse possession?OPP
4. Whether the suit is not maintainable in present form and shape?OPD
5. Whether there is no cause of action in favour of the plaintiffs?OPD
6. Whether this Court has no jurisdiction? OPD
7. Whether the suit is bad for non-joinder of necessary parties?OPD
8. Whether the suit is not properly valued for Court fee and jurisdiction?OPD
9. Relief.

4. Thereafter revisionists have closed their evidence in affirmative and case was listed for evidence of non-revisionists by learned trial Court. On 19.7.2011 learned trial Court dismissed the civil suit in default.

Thereafter revisionists filed application for restoration of civil suit and same was also dismissed in default by learned trial Court on 22.2.2012. Thereafter revisionists again filed another application for restoration of application as well as suit. Learned trial Court on 19.9.2012 restored the civil suit to its original number. Thereafter revisionists filed application No. 117/6 of 2014 under Order 23 Rule 1 (3) for withdrawal of present civil suit with permission to file fresh suit on same cause of action.

5. Court heard learned Advocate appearing on behalf of revisionists and learned Additional Advocate General appearing on behalf of non-revisionists and Court also perused the entire record carefully.

6. Following points arise for determination in present civil revision petition:-

Point No.1

Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of civil revision petition?

Point No. 2

Final Order.

Findings upon Point No. 1 with reasons

7. Submission of learned Advocate appearing on behalf of revisionists that learned trial Court had committed grave illegality by way of dismissing the application filed under Order 23 Rule 1(3) of CPC by revisionists is rejected being devoid of any force for the reasons hereinafter mentioned. Revisionists sought the withdrawal of civil suit with permission to file fresh suit on the same cause of action on the ground that suit land has been reverted back to villagers vide mutation No. 148 dated 25.5.2009 and State of H.P. has no right title or interest in suit land and persons who have shown as owners on account of reversion of land vide mutation No. 148 dated 25.5.2009 are to be impleaded as parties by the revisionists. Non-revisionists contested the application on the ground that civil suit is pending since 2004 and permission to withdraw the civil suit with liberty to file fresh civil suit on the same cause of action after lapse of eleven years should not be granted as same would cause miscarriage of justice.

8. It is proved on record that mutation No. 148 dated 25.5.2009 was attested during the pendency of

suit. It is well settled law that any mutation attested during the pendency of civil suit will be governed by concept of *lispendence* as mentioned in Section 52 of Transfer of Property Act 1882. *See AIR 2013 SC 2389 titled Thomson Press (India) Ltd. vs. Nanak Builders and Investors P. Ltd. and others. See (2012)7 SCC 738 titled A. Nawab John and others vs. V.N. Subramaniam. See JT 2010(3) SC 390 titled Kamal Kumar Agarwal vs. Commissioner of Commercial Taxes, West Bengal and others.*

9. It is well settled law that under Order 1 Rule 10 (2) CPC Court is competent to add persons as parties whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate the matters and to settle all questions involved in suit. Necessary parties can be impleaded at any stage of civil suit. Court is of the opinion that revisionists are at liberty to file application for impleadment of necessary parties before learned trial Court in accordance with law on account of subsequent event. It is also well settled law that under Order XXII Rule 10 CPC suit can be continued against any person upon whom any interest is devolved during pendency of civil suit. Revisionists can also file

application under Order XXII Rule 10 CPC 1908 before learned trial Court.

10. It is well settled law that party can withdraw the suit under Order 23 Rule 1 CPC at any stage of case unconditionally. It is well settled law that when plaintiffs intend to withdraw civil suit under Order 23 Rule 3 CPC with liberty to institute a fresh suit on the same cause of action then plaintiffs are under legal obligation to satisfy the Court following conditions. (1) That suit must fail by reasons of formal defect. (2) That there are sufficient grounds for allowing the plaintiff to institute the fresh suit on the subject matter of suit or part of claim. In present case there is no formal defect in suit when suit was instituted in the year 2004 and there are no sufficient grounds to allow the plaintiffs to institute fresh suit on same cause of action because alternative remedy of *lispendence* as provided under Section 52 of Transfer of Property Act 1882 and another alternative remedy of Order 1 Rule 10 (2) CPC and another alternative remedy under Order XXII Rule 10 CPC 1908 are available to revisionists in present civil suit. *See AIR 2012 SC 2925 titled Vidur Impex and Traders Pvt. Ltd. and others vs. Tosh*

Apartments Pvt. Ltd. and others. See AIR 2005 SC 2209 titled Amit Kumar Shaw and another vs. Farida Khatoon and another. See AIR 2004 SC 173 titled Bibi Zubaida Khatoon vs. Nabi Hassan Saheb and another. See AIR 2001 SC 2552 titled Dhurandhar Prasad Singh vs. Jai Prakash University and others. See AIR 1996 SC 135 titled Surjit Singh and others vs. Harbans Singh and others. In view of above stated facts point No.1 is decided in negative against the revisionists.

Point No. 2(Final Order)

11. In view of findings on point No.1 revision petition is dismissed. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of present revision petition. No order as to costs. Parties are directed to appear before learned trial Court on 26.10.2015. File of learned trial Court along with certified copy of this order be sent back forthwith. Revision petition stands disposed of. Pending miscellaneous application(s) if any also stands disposed of.

September 30,2015(ms)

(P.S.Rana),
Judge.