

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 73 of 2005.

Reserved on : 25/10/2016

Date of decision: 28/10/2016

Hari Singh

..Appellants/plaintiffs.

Versus

Dalip Singh and others.

..Respondents/defendants.

Coram

The Hon'ble Mr.Justice Sureshwar Thakur, J.

Whether approved for reporting?¹.

For the appellant: Mr. Ramakant Sharma, Sr. Advocate with
Ms. Soma Thakur, Advocate.

For the respondents: Mr. Sanjeev Kuthiala, Advocate.

Sureshwar Thakur, J:

1. The instant appeal stands directed against the concurrently recorded findings of both the Courts below whereby the suit of the plaintiff claiming therein a declaratory relief qua his standing declared co-owner in possession to the extent of 2/3rd share qua the suit property besides also its holding therein a declaratory relief qua the reflections carried in the relevant records in pursuance to the rendition of the Civil

¹ Whether the reporters of the local papers may be allowed to see the Judgment?

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Court of 8.9.1997 pronounced in Civil Suit No. 134/1 of 1992 verdict whereof attained affirmation on 15.12.1998 from the learned Appellate Court being declared to be void also its holding therein relief for partition of the suit land by metes and bounds besides its embodying the consequential relief of permanent prohibitory injunction for restraining the defendants from dispossessing the plaintiff from the suit property, stood dismissed.

2. The facts necessary for rendering a decision on the instant appeal are that Anant Ram the great grand father of the defendants No. 1 and 5 was the owner of the suit property and the other property in village Dhang Upperli, Pargana Plassi, Tehsil Nalagarh, District Solan. He was having 27 bighas 16 biswas of land. He died on 18.2.1951 and after his death Pratap, Ganga Vishan and Narata Ram inherited the estate. After the death of Gana Vishan, his widow and thereafter the defendants No. 3 and 4 inherited the share. The defendant No. 5 had filed a civil suit registered as C.S. No. 219/1 of 1991 against his father late Shri Pratapa before the Court concerned claiming the share of Pratapa in the family settlement. This suit was decreed on 13.8.1991. He sold land to different persons and the suit land was sold to the plaintiff vide sale

deed No. 1043 registered in the office of Sub Registrar, Nalagarh for consideration of Rs. 35,000/-. The defendant No.1 filed suit against the defendant No.5 and other vendees which was decreed. The defendant No.1 preferred an appeal and the decree was modified. The defendant No.1 was held to be co-owner to the extent of 1/3 share in the suit property and sale in favour of plaintiff was held valid to the extent of 2/3 share. Therefore, the plaintiff is co-owner to the extent of 2/3 share and defendant No.1 is co-owner to the extent of 1/3 share in the suit property. The property has not been partitioned. The defendants are threatening to oust the plaintiff. Hence this suit.

3. The suit is opposed by filing written statement, taking preliminary objections regarding the lack of maintainability and the suit being barred by principle of resjudicata. It was asserted that the Sale has been declared as null and void. Therefore, the plaintiff will not acquire any title. The suit has not been properly valued for the purpose of Court fee and jurisdiction. It was however, admitted that Anant Ram was previous owner of the disputed property. It was also admitted that the defendant No. 5 had got the decree in his favour. It was asserted that the sale deed executed by defendant No.2 have been declared to be null and void. The decree

has been correctly implemented. Therefore, it was prayed that this suit be dismissed.

4. On the pleadings of the parties, the trial Court struck following issues inter-se the parties at contest:-

1. Whether the plaintiff is co-owner in possession to the extent of 2/3 share in the suit property on the basis of judgement and decree dated 8.9.1997, as alleged. OPP.
2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to the partition of suit property, as alleged? OPP.
3. Whether the plaintiff is entitled to the relief of injunction, as prayed for?
4. Whether the suit is not maintainable, as alleged? OPD.
5. Whether this suit is barred by the principles of res judicata? OPD.
6. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
7. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiffs besides the learned First Appellate Court dismissed the appeal preferred therefrom before it by the plaintiff.

6. Now the plaintiff has instituted the instant Regular Second Appeal before this Court, assailing the findings recorded in its impugned judgment and decree by the learned first

Appellate Court. When the appeal came up for admission on 27/04/2005 this Court admitted the appeal on the hereinafter extracted substantial question of law:-

"1. Whether the impugned judgement and decree is the result of complete misreading, misinterpretation as well as misappreciation of Ext.P-1 sale deed dated 5.12.1994 as well as Ext.P8 mutation dated 31.12.1994."

Substantial question of law.

7. The rendition of the Civil Court concerned of 8.9.1997 pronounced in Civil Suit No. 134/1 of 1992 attained affirmation on 15.12.1998 from the Appellate Court. The previously recorded rendition of the aforesaid Courts were qua suit property analogous to the suit property hereat besides stood pronounced with the plaintiff herein being also a contestant therein. In sequel with the renditions aforesaid of the Civil Courts for lack of theirs standing reversed by this Court in a second appeal preferred herebefore by the aggrieved hence, acquiring conclusivity, also therefrom they on satiation standing begotten qua the imperative ingredients for hence the instant suit of the plaintiff standing inferred to be barred by

the rule of estoppel constituted in Section 11 of the CPC, conspicuously when the apposite statutory satiation occurs qua (a) analogy of the suit property therein vis.a.vis. the suit property hereat. (b) The plaintiff being a contestant therein visibly attract qua the instant suit the principle of res judicata. In aftermath hence the instant suit stands barred by attraction qua it of the principle of res judicata embodied in Section 11 of the CPC besides the reflections carried in the revenue record in consonance therewith also acquire unassailable legitimacy. Since the verdicts pronounced in the aforesaid renditions of the Civil Courts attain finality besides conclusivity, the corollary thereof is qua the alienation of suit property comprised in Khasra No. 463 by the relevant alienor wherein the Civil Court pronounced his holding a share to the extent of 2/3, its alienation to the extent of 1/3 by the relevant alienor palpably breaching the conclusive verdicts of Civil Courts concerned besides when the suit property embodied in Khasra No. 463 is joint inter se the plaintiff vis.a.vis other co-owners therein, any alienation of a specific portion

thereof by the relevant alienor also infringes the mandate of Civil Courts concerned. Consequently, when the declaratory relief claimed by the plaintiff is qua his holding 1/3rd share in the suit property comprised in Khasra No. 463 warranted as tenably drawn by both the Courts below a conclusion qua espousal therebefore of the relief aforesaid constituting breach of the mandate of the conclusive renditions of Civil Courts concerned, hence, a concomitant denial thereof to the plaintiff being a ensuable sequel therefrom.

8. Moreover, with the plaintiff holding a share alongwith other co-owners in the suit property held in Khasra No. 463 besides his holding jointly alongwith other co-owners' property other than the one held in Khasra No. 463 prodded both the learned Courts below to tenably hold qua the plaintiff hence standing not entitled to seek a declaratory relief qua his standing entitled to seek its dismemberment by metes and bounds. Also significantly when in Khasra No. 463 he claims rendition of a decree proclaiming his holding a 1/3rd share therein, proclamation

whereof breaches the mandate of the apposite renditions of Civil Courts concerned, did as tenably ordered by both the Courts below warrant its denial.

9. Be that as it may, with the plaintiff not unequivocally testifying qua the defendants committing any overt act upon the suit land nor his ascribing to them any overt act qua theirs causing interference with his possession vis.a.vis. the suit property nor any evidence surging forth qua the defendants threatening to by raising construction thereon dispossess him from the suit property warranted declining to him the relief of injunction as tenably ordered by both the Courts below. Also with Khasra No. 463 standing jointly held by the plaintiff with other co-owners therein in sequel whereof when he alongwith other co-owners held unity of title besides community of possession qua every inch of land held therein also when he is unable to portray qua his exclusively holding possession of any earmarked portion thereof, he was not empowered to vis.a.vis other co-

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owners holding alongwith him joint possession of Khasra No. 463 seek vis.a.vis them relief of injunction.

10. For reasons aforesaid this Court concludes with aplomb of the judgements and decrees of the Courts below standing sequelled by theirs appraising the entire evidence on record in a wholesome and harmonious manner apart therefrom it is obvious that the analysis of material on record by the learned Courts below not suffering from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather they have aptly appreciated the material available on record. I find no merit in this appeal, which is accordingly dismissed and the judgments and decrees of the both the Courts below are maintained and affirmed. Substantial question of law stands answered against the plaintiff. No costs. The pending application(s), if any, also stand disposed of. Records of the Courts below be sent back forthwith.

28th October, 2016.
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(Sureshwar Thakur)
Judge.