

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

**RSA No. 277 of 2006.**

**Reserved on : 21<sup>st</sup> December, 2016.**

**Decided on : 30<sup>th</sup> December, 2016.**

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Bhag Singh and another      **.....Appellants-defendants.**

Versus

Sona Kumari and others      **....Respondents/Plaintiffs.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?<sup>1</sup>*

**For the Appellants:**      Mr. Dinesh Bhanot, Advocate.

**For Respondent No.1:**      Mr. G.S. Rathore, Advocate.

Nemo for other respondents.

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**Sureshwar Thakur, Judge.**

The instant Regular Second Appeal stands directed against the impugned judgment and decree recorded by the learned District Judge, Solan, camp at Nalagarh, District Solan, H.P. in Civil Appeal No. 4-NL/13 of 2005/2002, whereby the latter while allowing the appeal of the

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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plaintiffs/respondents herein reversed the judgment and decree of the learned trial Court. The defendants/appellants herein stand aggrieved by the rendition of the learned First Appellate Court wherefrom they have instituted the instant appeal herebefore.

2. The brief facts leading to the lis inter se the parties are that the plaintiffs have filed the suit for seeking declaration to the effect that the plaintiffs are exclusive owners in possession of the suit land detailed in the plaint and the defendants are having no right, title or interest over the same and for the consequential relief of permanent prohibitory injunction for restraining the defendants from claiming any right, title or interest and alienating and disturbing or interfering in the possession of the plaintiffs over the suit land. It is pleaded that the defendant No.1 was the owner of land comprised in khewat/khatauni No.118/120,m bearing khasra No. 211, 212 and 2245, total land measuring 18 biswas to the extent of one share and Kashmir Singh and Ranvijay Singh were owners to the extent of three shares in

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the suit land, who had sold suit land to plaintiff No.1 vide sale deed No.1262 of 29.11.96 and the possession was also delivered at the spot. Kashmir Singh also sold his share to plaintiffs No.2 and 3 vide sale deed No.34 of 8.1.1998. Defendant No.1 sold his share out of khasra No.211 and 224 to one Gokal vide sale deed No.607 of 31.5.1995. Defendant No.1 had received full consideration and defendant No.1 is shown to be owner to the extent of 1 biswas and defendant No.1 is having no right over the same. He has also sold his share to the plaintiffs and Gokal. The plaintiffs are in exclusive possession of the suit land and Abadi. Defendant No.1 is threatening to execute some documents in favour of defendant No.2. Hence this suit.

3. The suit of the plaintiffs was contested by the defendants by filing written statement denying the contents of the plaint. Preliminary objections inter alia maintainability and estoppel have been taken. It is pleaded that defendant No.1 has sold 9 karam X 3 karams of land in khasra No.211 located towards north adjoining cooperative store building to

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defendant No.2 on 24.10.1999. This land was in possession of defendant No.1. Previously, S. Sh. Nanak and Mahantu were owners of old khasra No. 262 measuring 18 biswas in equal share and after the death of said Mahantu his  $\frac{1}{2}$  share was inherited by Sh. Bhag Singh and his mother. Sh. Nank and Smt. Santo sold land measuring 13 biswas out of this land on 13.1.1971 to S. Sh. Kashmir Singh and Ranvijay Singh and mutation No.288 was sanctioned on 4.5.1971. S/Sh. Kashmir Singh and Ranvijay Singh were put into possession of this land measuring 13 biswas, comprised in khatauni No.135 of khata No.73. The remaining 5 biswas of land was in possession of defendant No.1. The plaintiffs purchased 13 biswas of land from Sh. Ranvijay Singh and subsequently one Kashmir Singh vide mutations No. 643 of 24.12.1996 and mutation No.667 of 27.3.1998. Defendant No.1 had sold 2 biswas of land to the plaintiffs and mutation No.668 of 26.5.1998 was attested. The land measuring 1 biswa having measurement 3 karams in East, 3 karams in west, 9 karams North side of khasra No.211

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adjoining to the cooperative store building remained in possession of defendant No.1. Defendant No.1 was enjoying possession of 27 biswancies of land out of khasra No.211 and sold the same to defendant No.2. The plaintiffs are estopped to file the suit and the suit is not maintainable. It is pleaded that plaintiffs always admitted defendant No.1 to be owner of 27 biswancies of land and they never interfered in the possession of defendant No.1. The plaintiffs have also encroached over the area to the extent of 2 karams out of land measuring 27 biswancies.

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

1. Whether the plaintiffs have purchased the whole suit land via different sale deeds executed in their favour in khasra No.211?
2. Whether the defendants are interfering in the possession of the plaintiffs without any right, title or interest? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs are estopped from filing the present suit on account of act, conduct and acquiescence?OPD

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5. Whether the plaintiffs have not come to the Court with clean hands if so, it effect?OPD
6. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, it dismissed the suit of the plaintiffs/respondents herein. In an appeal, preferred therefrom by the plaintiffs/ respondents herein before the learned first Appellate Court, the latter Court while allowing the plaintiffs' appeal, reversed the findings recorded by the learned trial Court.

6. Now the defendants/appellants herein have instituted the instant Regular Second Appeal before this Court assailing therein the findings recorded in its impugned judgment and decree by the learned first Appellate Court. When the appeal came up for admission on 01.08.2007, this Court, admitted the appeal instituted by the defendants/appellants against the judgment and decree of the learned first Appellate Court, on the hereinafter extracted substantial question of law:-

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1. Whether the judgment of the learned appellate court can be sustained when it ignores the provision of Section 92 of the Evidence Act, allowing oral evidence to vary the terms of the written documents namely, sale deeds which are subject matter of the suit?

**Substantial question of Law No.1:**

7. The sole contentious issue which enjoins pronouncement of a verdict thereupon pertains to the trite factum of one Bhag Singh holding any absolute alienable title to the extent of one biswa whereupon he would hold a concomitant leverage to confer title qua it upon one Gur Avtar Singh besides in entwinement thereto the factum of conveyance by Bhag Singh vis-a-vis one Gur Avtar Singh under a registered deed of conveyance executed by him in the latter's favour to the extent of one biswa suffering or not suffering invalidation, would occur. For pronouncing a verdict upon the aforesaid trite factum, an allusion to the apposite revenue records unveils disclosures qua the co-owners vis-a-vis khasra No.262 subsequently whereto during the holding of consolidation operation, khasra No.211 stood assigned to it, inasmuch as one Bhag Singh holding therein a share of 4 bsiwa 10 biswancies, one kashmir Singh holding therein a

share of 6 biswas 15 biswancies and one Ranvijay Singh holding a share therein to the extent of 6 biswas 15 biswancies. Both the aforesaid co-sharers in khasra No.211 had under apposite deeds of conveyance respectively executed by them vis-a-vis their vendee(s), had respectively therein alienated qua the latter(s) 7 biswas despite theirs vis-a-vis khasra No.211 holding a share therein holding an area lesser than 7 biswas, on anvil of the Revenue Authorities concerned while purveying them the apposite records theirs by adopting the well accepted precedent of rounding off, theirs making corresponding disclosures in the jamabandies apposite to the suit land. However, the share in khasra No.211 of one Bhag Singh held an area of 4 biswas 10 biswancies thereupon on adoption of the customary precedent of rounding off, his share therein stood enjoined to be computed to be holding an area of 4 biswas rather than five biswas as untenably done by the Revenue Authorities concerned. Consequently, the working out by the Revenue authorities concerned of the share of one Bhag Singh in



khasra No.211 holding an area of 5 biswas whereupon one biswa stood added to his share in khasra No.211, in sequel whereof, he in excess to his share in khasra No.211 executed to the extent aforesaid a registered deed of conveyance vis-a-vis one Guravtar Singh cannot hold any legal validation, corollary whereof is qua the passing of title only to the extent of 1 biswas under a registered deed of conveyance executed by Bhag Singh vis-a-vis one Gur Avtar Singh also suffers the concomitant fate of it warranting its standing set aside.

8. The above discussion unfolds the fact that the conclusions as arrived by the learned first Appellate Court stand based upon a proper and mature appreciation of the evidence on record. While rendering the apposite findings, the learned first Appellate Court has not excluded germane and apposite material from consideration. Accordingly, the substantial question of law is answered in favour of the plaintiffs/respondents and against the defendants/appellants.

9. In view of above discussion, the instant appeal is dismissed. In sequel, the judgment and decree rendered by

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the learned District Judge, Solan, camp at Nalagarh, District Solan, H.P. in Civil Appeal No. 4-NL/13 of 2005/2002 is affirmed and maintained. The parties are left to bear their own costs. Decree sheet be drawn accordingly. All pending applications also stand disposed of.

**30<sup>th</sup> December, 2016.**  
**(jai)**

**(Sureshwar Thakur)**  
**Judge.**