

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 630 of 2007.

Reserved on : 20th December, 2016.

Decided on : 30th December, 2016.

Surinder Singh and others **.....Appellants/Plaintiffs.**

Versus

State of H.P. **....Respondent/defendant.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.
Whether approved for reporting?¹ .

For the Appellants: Mr. Bhupender Gupta, Senior
Advocate with Mr. Ajeet Jaswal,
Advocate.

For Respondent: Mr.Vivek Singh Attri, Dy. A.G.

Per Sureshwar Thakur, Judge.

The plaintiffs' suit for a decree of declaration stood decreed by the learned trial Court. However, in an appeal preferred therefrom by the defendant/respondent herein before the learned first Appellate Court, the latter Court reversed the judgment and decree rendered vis-a-vis the plaintiffs by the learned trial Court. In sequel, the plaintiffs stands aggrieved by the judgment and decree

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

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rendered by the learned first Appellate Court whereupon they are constrained to assail it by instituting the instant appeal therefrom before this Court.

2. Briefly stated the facts of the case are that the plaintiffs have filed the present civil suit for declaration that they are owners in exclusive possession of the land comprised in khata No.51, min, khatauni No.74 and khasra Nos. 309 and 503/330,kitas 2 measuring 53 bighas and 15 biswas, situated in Chak Jalthar, Tehsil Kotkhai, District Shimla, H.P. and accordingly revenue entries are wrong and illegal. The plaintiffs have put up the case that the defendant No.1 shown in the column of ownership and Smt. Bano Devi, Smt. Laxmi Devi, Smt. Rukmani Devi, Smt. Shibi Devi, Sh. Rajinder Singh (predecessors-in-interest of the plaintiffs No.3 to 7), Shri Ranjhor Singh (predecessor-in-interest of the plaintiffs No.8 to 15) and plaintiffs No.1 and 2 are recorded in the column of possession as per jamabandi for the eyar 1989-90. It is claimed that Smt. Bano Devi, Smt. Laxmi, Smt. Rukmani Devi and Smt. Shibi Devi had died near about 40-45 years ago

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without leaving behind any legal heirs of their own. Similarly, Sh. Rajinder Singh has died near about 10 years back and defendants No. 2 to 10 are his legal heirs. Even in the absence of the legal heirs of Smt. Bano Devi, Smt. Laxmi Devi, Smt. Rukmani Devi and Smt. Shibi Devi, it is Rajinder Singh who would have inherited their interest in the suit land. It is claimed that near about 10 years back, partition took place between predecessor-in-interest of the defendants No.2 to 10 and the predecessors in interest of the plaintiffs and accordingly the former have relinquished their share in the suit land in favour of the latter. It is asserted that the plaintiffs are coming in exclusive possession of the suit land from the time of their forefathers for the last more than 50 years as of right, openly, peacefully without any interruption and such possession has become hostile against the interest of the defendants. Defendant No.1 is also stated to have admitted the possession when it started proceedings under Section 163 of the H.P. Land Revenue Act and those proceedings were dropped by the Assistant Collector, 2nd

Grade, Theog vide its order dated 21.1.1968. The cause of action is stated to have arisen recently in favour of the plaintiff and against the defendants as wrong and illegal revenue entries are continuing in the revenue record.

3. Defendant No.1 contested the suit and filed the written statement, wherein, defendant No.1 has admitted the entries made in the revenue record. Regarding death of Smt. Bano Devi, Smt. Laxmi Devi, Smt. Rukmani Devi, Smt. Shibi Devi and Sh. Rajinder Singh, it is submitted that this fact has not been brought to the notice of the revenue authorities and accordingly their names are continuing in the revenue record. It is denied that the plaintiffs have become the owners of the suit land by way of adverse possession. Besides defendant No.1 has also taken preliminary objections of jurisdiction, maintainability, valuation and cause of action.

4. The plaintiffs/appellants herein filed replication to the written statement of defendant No.1/respondent, wherein, they denied the contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

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

1. Whether the plaintiffs have become owners of the suit land by way of adverse possession?OPP.
2. Whether the civil court has no jurisdiction to try the suit?OPD.
3. Whether the suit is not maintainable in the present form?OPD.
4. Whether the suit has been properly valued for the purpose of court fee and jurisdiction, if not what is the proper value?OPP.
5. Whether the plaintiffs have no cause of action?OPD.
6. Relief.

6. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court rendered a decree for declaration in favour of the plaintiffs/appellants. In an appeal, preferred therefrom by defendant No.1/respondent herein, the learned first Appellate Court allowed the appeal.

7. Now the plaintiffs/appellants have 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

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admission on 8.5.2008, this Court, admitted the appeal as instituted herebefore by the plaintiffs/appellants against the judgment and decree, rendered by the learned First Appellate Court, on the hereinafter extracted substantial question of law:-

1. Whether the Lower Appellate Court has acted in an illegal, erroneous and perverse manner in misreading the plaint and the evidence of plaintiffs-appellants by recording evidence that the ingredients of adverse possession has neither been pleaded nor proved? Are not such findings contrary to the record and amount to illegal and erroneous exercise of jurisdiction?
2. Whether the Lower Appellate Court has misread documentary evidence especially Ex. P-19 and Ex. P-1 to P-10 in ignoring that in the year 1968, the Assistant Collector, 2nd Grade refused to eject the predecessor of plaintiffs-appellants by acknowledging their claim of long antecedent possession prior to the year 1965? Was not such documentary evidence conclusive in assertion of hostile title against the defendant-respondent which fact has been ignored in a highly erroneous and perverse manner?
3. Whether the findings of Lower Appellate Court are illegal, arbitrary, erroneous and perverse being mechanical and exhibited non application of mind by relying upon mutation No.272 which had no relevance, especially in view of the fact that the lower Appellate Court has misread the plaint and failed to notice the area of land in dispute? Are not the findings of Lower Appellate Court based on no evidence and vitiating the impugned judgment and decree?
4. When the defendant-respondent did not adduce any evidence to rebut the evidence of plaintiffs-appellants by which adverse possession stood conclusively proved? Has not the Lower Appellate Court taken essentially wrong approach by committing grave procedural error and illegality in not assigning any good, cogent and sufficient reason to differ with the findings of the trial Court?

Substantial questions of Law No.1 to 4:

8. The plaintiffs had staked a claim qua the apposite entries held in the apposite revenue records holding reflections therein qua defendant No.1 holding title as owner qua the suit land besides holding reflections qua the co-defendants respectively the successors-in-interest of one Jagjit Singh and of Ranjhore Singh holding possession thereto, standing pronounced to be declared null and void. The bedrock of the claim staked qua the suit land by the plaintiffs rested upon theirs espousing qua theirs since the time of their forefathers besides for more than 50 hitherto years, theirs with an animus possidendi holding possession of the suit land whereupon with the apposite period of limitation prescribed in the relevant Article of the Limitation Act standing completed therefrom upto the institution of the suit thereupon they concomitantly espoused qua theirs perfecting their title upon the suit land by the statutory prescription or in other words theirs acquiring prescriptive title qua the suit land. Visibly the reflection occurring in the apposite revenue record borne

on Ex. P-1 to P-18, pertaining to the years 1915-16 to 1989-90 comprising respectively the copies of various jamabandies apposite to the suit land besides copies of Missal Hakiyat apposite thereto, hold a vivid display therein qua the State of Himachal Pradesh being the owner of the suit land also they hold a display qua one Chandnu thereafter one Bhano Devi standing therein reflected to hold possession over the suit land. Upto the years 1956-57, in the column of classification apposite to the suit land, it stands categorized to be "Banjar Kadim Chagh Darkhtan". The classification column apposite to the suit land pertaining to the year 1961 makes a disclosure qua it holding the category of "Bagicha". Moreover, in Ex. P-19 comprising the copy of the order of 31.1.1968 pronounced by the Assistant Collector 2nd Grade, Theog unveils the factum qua proceedings standing initiated qua one Jagjeet Singh under Section 163 of the H.P. Land Revenue Act for seeking his ejectment from the suit land also it make a display qua the proceedings aforesaid initiated

against one Jagjit Singh under the aforesaid provisions standing dropped.

9. Be that as it may, with the recorded owner of the suit property by initiating proceedings for seeking ejectment of one Jagjeet Singh from the suit land thereupon hence articulating an assertion of ownership thereupon, though obviously denudes the vigour of the plaintiffs' espousal qua the plaintiffs since their forefathers with an animus possidendi without any overt remonstrance by the recorded owner of the suit property holding any peaceful continuous possession of the suit land since theresince upto the date of institution of the suit besides the effect of the denudation aforesaid to the vigour of the aforesaid espousal of the plaintiffs standing hence begotten is qua thereupon the strength of their claim qua theirs perfecting their title by statutory prescription qua the suit land also suffering an apparent dwindlement. Nonetheless, dehors the inference aforesaid, the paramount factum which erodes the vigour of the claim of the plaintiffs qua theirs perfecting their title qua the suit land by

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prescription ensuing from theirs since the time of their forefathers upto the date of the institution of the suit hence with an animus possidendi holding possession of the suit land for the statutorily mandated period of limitation also whereupon the espousal of the plaintiffs founders stands embodied in the trite factum of a catena of decisions recorded by the Hon'ble Apex Court propounding therewithin qua the aforestated espousal being unavailable for succor standing derived therefrom by the plaintiff(s), contrarily, the verdict(s) of the Hon'ble Apex Court propound qua any espousal on the facet aforesaid being available for standing reared only by the defendant(s), for the latter repulsing the assertion of title qua the apposite suit land, nursed by the plaintiffs. The apposite sequel of the aforesaid mandate of law held in a catena of verdicts pronounced by the Hon'ble Apex Court is qua the plea of the plaintiffs qua theirs perfecting their title qua the suit land by adverse possession warranting its standing discountenanced. In aftermath, the

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findings and conclusions recorded by the learned First Appellate Court do not warrant any interference.

10. 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 questions of law are answered in favour of the defendant/respondent herein and against the plaintiffs/appellant herein.

11. In view of above discussion, the present Regular Second Appeal is dismissed and the judgement and decree rendered by the learned First Appellate Court is affirmed and maintained. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

30th December, 2016.
(jai)

(Sureshwar Thakur)
Judge.