

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA No. 290 of 2008.

Reserved on : 25th October, 2018.

Decided on : 31st October, 2018.

Sh. Romel SinghAppellant/plaintiff.

Versus

Smt. Gur Devi & Ors ...**Respondents/Defendants.**

Coram:

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

*Whether approved for reporting?*¹ Yes.

For the Appellant: Mr. Ashwani K. Sharma, Sr. Advocate with Mr. Jeevan Kumar, Advocate.

For the Respondents: Mr. Bhuvnesh Sharma, Advocate.

Sureshwar Thakur, Judge.

The plaintiffs' suit for rendition of a decree, for possession stood dismissed by the learned trial Court. In an appeal carried therefrom, before the learned First Appellate Court, by the plaintiff, the latter Court

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

dismissed his appeal besides obviously affirmed the trial Court's judgment and decree of dismissal of the plaintiff's suit.

2. Briefly stated the facts of the case are that plaintiff Romel Singh has filed the civil suit for rendition of a decree for possession against the defendants. It has been pleaded that subject matter of the suit is the land comprised in Khata No.76, Khatauni No. 88, Khasra No. 55, 65, 100, 116, 128, 132, 179, 195, 200, 216, 222, 225, 309, 329, 805, 810, 921, 925 and 927, measuring 1-30-17 hectares and 3/32 shares out of the land comprised in Khata No.21, Khatauni No. 64, Khasra No.588 situated in village Dangra, Mauza Garli, Tehsil Dehra, District, Kangra, H.P. It has been pleaded that the suit land is recorded to be in the ownership and possession of defendants No.7 to 9 along with predecessor-in-interest of defendants NO.1 to 6 including other co-sharers and one Gittu son of Dalipa sold the suit land vide register sale deed of 3.2.1965 to one Man Chand, the

predecessor-in-interest of defendants No.1 to 4 and Hukam Chand, the predecessor-in-interest of defendants No.5 and 6 along with defendants No.7 to 9 and thereafter the plaintiff filed civil suit No.107 of 1972, titled as Romel Singh vs. Sh. Roshan Lal and others, challenging the sale deed as void and ineffective and its being not binding upon the plaintiff along with other co-sharers against their reversionary interest after the death of alienor. The plaintiff has also challenged the sale deed on the grounds that the suit being ancestral and its being without legal necessity. It has been further pleaded that his previous suit was dismissed on 26.7.1976 and thereafter he preferred the appeal No.146/1976 before the learned District Judge and the appeal was also dismissed on 14.5.1979, whereafter, the plaintiff has preferred the Regular Second Appeal bearing RSA No.189 of 1979 before the High Court and that appeal was allowed and thereby the judgment and decree of both the learned courts below stood set aside and in sequel the

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plaintiff's suit stood decreed. The plaintiff has further pleaded that after the death of original vendor Gittu on 17.1.1974, during the pendency of the previous suit and thereby the plaintiff has pleaded and claimed to be reversioner and thereby entitled for decree for possession of the suit land.

3. The defendants contested the suit and filed written statement, wherein, they have taken preliminary objections of maintainability, limitation, cause of action and locus standi. On merits, the defendants have admitted the the previous litigation inter se the parties. It is pleaded that the plaintiff is not the near reversioner of the deceased vendor, and, as such, he is not entitled to recover possession from them. According to them only S/Sh. Roshan and Magar are the nearest reversioners of late Shri Gitu and as such only they can claim possession of the suit land.

4. The plaintiff filed replication to the written statement of the defendant(s), wherein, he denied the

contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

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

1. Whether the plaintiff is entitled to the relief of possession?OPP.
2. Whether the suit is barred by limitation?OPD.
3. Whether the plaintiff is incapacitated to maintain the suit in the presence of Roshan Lal, Maghar son of Banka, if so its effect?OPD.
4. Relief.

6. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff/appellant. In an appeal, preferred therefrom, by the plaintiff/appellant herein before the learned First Appellate Court, the latter Court dismissed

the appeal and affirmed the findings recorded by the learned trial Court.

7. Now the plaintiff/appellant herein, has instituted the instant Regular Second Appeal before this Court, wherein they assail the findings recorded in its impugned judgment and decree, by the learned first Appellate Court. When the appeal came up for admission, on 26.6.2008, this Court, admitted the appeal instituted by the plaintiff/appellant against the judgment and decree, rendered by the learned first Appellate Court, on the hereinafter extracted substantial question of law:-

1. Whether the suit of the plaintiff could have been dismissed only on the ground that the nearer reversioners Roshan and Magher had not filed any suit for possession of the land in question?

Substantial question of Law No.1:

8. Romel Singh, plaintiff in the instant suit, had, earlier instituted Civil Suit No. 107 of 1972, before the Civil Court concerned, espousing therein the relief, for, setting aside the registered deed of conveyance,

executed, vis-a-vis, the suit khasra numbers, on 3.2.1965, by one Gittu, vis-a-vis Man Chand, the predecessor in interest of defendant No.1 to 5, and Hukam Chand, the predecessor-in-interest of defendants No.5 and 6, and, defendants No.7 to 9, hereat. The afore relief was canvassed on the ground (i) that the afore alienation effected by one Gittu, being null and void, and, its being not binding, upon, other heirs, or, against their apt reversionary interest, after the alienors' demise. The further ground, for, challenging the afore deed of conveyance, as, executed by one Gittu, in the year 1965, stood anvilled, (ii) upon, the factum of the suit land being ancestral coparcenary property, and, sale thereof, being without necessity. Civil suit bearing No.107 of 1972, stood dismissed, by the trial Court, and, in an appeal carried therefrom, before the First Appellate Court concerned, the verdict of dismissal pronounced, upon, the plaintiff's suit, stood, hence affirmed. Subsequently, Rumel Singh, the plaintiff in the earlier suit, being

aggrieved, therefrom, hence instituted a Regular Second Appeal before this Court, and, this Court proceeded to allow the afore RSA, (iii) and, in sequel concurrent judgments and decrees rendered by both the learned Courts below were set aside, and, the plaintiff's suit for declaration was allowed. The afore factual matrix obviously enjoins, an allusion being made, to, the pronouncement made by this Court, upon, RSA No. 159 of 1979, (iv) rendered in a litigation inter se Rumel Singh (plaintiff therein) also plaintiff hereat, and the predecessor-in-interest of defendants No.1 to 4, and, of predecessor-in-interest of defendants No.5 & 6, and, of, defendants No.7 to 9. The successors-in-interest, of, the afore, respectively arrayed therein predecessor-in-interest, are, impleaded as parties in the extant civil suit. Sequel thereof, is, hence, qua a conclusive and binding verdict, rather being validly construed to stand pronounced, vis-a-vis, litigants, all litigants whereof, hold analogy, vis-a-vis, the litigants in the previous suit, and,

in the instant suit, and, when the suit khasra numbers, in, the previous litigation, and, in the extant litigation, apparently hold commonality, (v) thereupon, the afore declaratory decree pronounced in the prior litigation, obviously holds, an apt conclusive, and, binding effect. Since, the rendition made by this Court, upon, the afore RSA No. 159 of 1979, hence holds conclusivity, thereupon, the apt ratio propounded therein and the relief therein pronounced, vis-a-vis, the plaintiff, whereunder, liberty stood reserved to the plaintiff therein, one Rumel Singh, also the plaintiff herein, to subsequent thereto, rather institute a suit for possession, (vi) and, also the effect and the import thereof, rather is enjoined to gauged, (vii) and, thereafter, the aptness of applicability thereof, by both the learned counsel below, upon, the plaintiff's suit, being also enjoined to be determined. The apt ratio propounded in the afore verdict is anvilled, upon, the principle encapsulated, in, a judgment rendered, by, the Hon'ble Apex Court in case

titled as ***Radha Rani Bhargava vs. Hanuman Prasad Bhargava***, reported in ***AIR 1966 SC 216***, wherein, it stands encapsulated therein (a) that the apt right of the reversioner qua possession, vis-a-vis, the suit property, being accruable, vis-a-vis, the entire body of reversioners, (b) and one amongst the reversioners, who actually happened to be the next heir of the deceased, and, upon whose demise, the deceaseds' estate hence opened for succession, being entitled to secure, the, apt advantage(s), of the decree; (c) the suing reversioner holding no reversionary interest apart from the entire reversionary body. (d) The reversioners' suit for possession being a representative suit, vis-a-vis, the benefit(s), claimed thereunder, and, for the propagation of the interest of the entire body, of, the apposite reversioners, (e) whereupon whom the right of possession or succession to the estate of the deceased, is, aptly bestowable or accruable. Conspicuously, in the rendition made by this Court, upon, RSA No.159 of 1979, it had in

the afore manner concluded that (a) relief of possession, vis-a-vis, the suit khasra number being decreeable, vis-a-vis, the next reversioner, (b) who otherwise, stands, entitled on the demise of the deceased concerned, to, inherit, his estate, (c) yet this Court, had, refused, the, afore relief of possession, vis-a-vis, Rumel Singh, for want of impleadment of the apt reversioners, rather holding, the, closest proximity to the deceased concerned, conspicuously, in the line of reversioners, and, consequently, this Court while making its decision, upon, RSA NO.159 of 1979, had reserved the apt benefit(s) to the nearest reversioner, to, hence, institute a suit for possession, vis-a-vis, the suit khasra numbers, (d) given the aforesaid pronouncement occurring in the rendition made by this Court, upon, the afore RSA No.159 of 1979, it was imperative for the plaintiff, to institute the suit, in a representative capacity, and, to also make prayer therein qua his suit being laid for benefit of the entire body, of, the apt reversioners. However, he failed to cast the

instant suit in the apt representative capacity, nor he sought rendition, of, a decree for possession, in, pursuance to the decree, granted by this Court, while making a decision upon RSA No.159 of 1979, rather he has claimed, hence, rendition of a decree for possession, vis-a-vis, the suit khasra numbers, rather being pronounced only, vis-a-vis, him, (e) thereupon, when the afore relief, was, declined by this Court, while its making a decision, upon, RSA No.159 of 1979, by meteing the trite reason, that, in the absence of impleadment, in the previous suit, of, the closest/nearest reversioner, of, the deceased, the relief of possession being not grantable, vis-a-vis, the plaintiff therein, who is also the plaintiff hereat, (f) rather when as aforestated, it granted the apt liberty to institute, a suit, seeking therein rendition of a decree for possession only, vis-a-vis, the nearest reversioners, (g) thereupon, the dismissal of the plaintiff's suit for possession, in the absence of it being cast in the apt representative capacity, nor it standing ventilated in

the relief clause qua claim, for, rendition of decree for possession, being grantable, upon, the entire body of reversioner, (h) thereupon, the plaintiff had no locus standi, within, the ambit of the previous decision, made by this Court, upon, RSA No. 159 of 1979, to institute the instant suit, and, the concurrent verdicts pronounced by both the learned Court below, (i) in the absence of Maghar and Roshan, or their successors-in-interest, being arrayed as co-plaintiffs, are also obviously in tandem therewith, (j) conspicuously when the pedigree table occurring Ex. D-1, in, tandem with the decision of this Court, rendered, upon the afore RSA, whereunder, a right to institute a suit for possession, vis-a-vis, the suit khasra number, stand, bestowed upon the reversioners next to the deceased, or who are most proximate in the line, of, the reversioners, (k) thereupon, both afore Maghar, and, Roshan and their successors-in-interest, alone were entitled to institute the suit for possession, whereas, theirs not standing arrayed as co-plaintiffs, hence,

renders the plaintiff, to, hold no locus standi to maintain the instant suit.

9. The above discussion unfolds the fact that the conclusions as arrived by the learned first Appellate Court as well as by the learned trial Court being based upon a proper and mature appreciation of evidence on record. While rendering the findings, both the learned Courts below have not excluded germane and apposite material from consideration. Accordingly, substantial question of law No.1 is answered accordingly.

10. In view of above discussion, there is not merit in the instant appeal and it is dismissed accordingly. In sequel, the judgment and decree impugned before this Court is maintained and affirmed. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs.

**31st October, 2018.
(jai)**

**(Sureshwar Thakur)
Judge.**