

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

**RSA No. 487 of 2007.**

**Reserved on : 20<sup>th</sup> June, 2018.**

**Decided on : 29<sup>th</sup> June, 2018.**

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State of H.P.

**.....Appellant/defendant.**

Versus

Ishwar Dass (since deceased) through his legal heirs &  
another

**....Respondents/Plaintiffs.**

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***Coram:***

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

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

**For the Appellant:** Mr. Yudhvair Singh Thakur,  
Deputy Advocate General.

**For the Respondents:** Mr. Rajneesh K. Lal, Advocate.

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**Sureshwar Thakur, Judge.**

The instant appeal is directed, against, the impugned verdict recorded by the learned Additional District Judge (1), Kangra at Dharamshala, H.P., upon, Civil Appeal No. 46-D/03, whereby, he reversed the verdict of the learned trial Court, whereunder, the latter

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

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hence dismissed the plaintiffs' suit, for, rendition of a declaratory decree for quashing the apposite mutation, and, consequent therewith reflections, as, carried in the revenue record apposite to the suit land.

2. Briefly stated the facts of the case are that the plaintiffs have filed a suit for declaration to the effect that they are owners in possession of the land comprised in Khewat No. 245, Khatauni No.559, Khasra Nos. 7, 35, 36, 43, 44, 45, 46, 47, 48, 59, 50, 51, 53 to 62, 64, 65, 66, 67, 68, 74, 668, 1039 (30 lots), measuring 2-13-46 hecets. Of Mohal Bagani Mauza Sidhbari, Tehsil Dharamsala, District Kangra, H.P. and the defendant has no right, title or interest in the above mentioned land and with a consequential relief of permanent injunction restraining the defendant from interfering with the suit land in any manner whatsoever. It is submitted that the plaintiffs entered in possession of the suit land as per the jamabandi for the year 1995-96. Rukmani widow of Sukh

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Ram had died and only the plaintiffs are her legal representatives. The aforesaid suit land, earlier was entered in the ownership of Shamlat deh in accordance with the share of the proprietors in Shamlat, i.e., entry was Hasab Rasad Malguzari and the land was recorded in possession of Smt. Radho and Smt. Isho as tenants and one Ganesha was shown as their sub-tenant. Thereafter, Sh. Sudama and others, 170 co-sharers (proprietors) executed a gift deed of 29.8.1912 in favour of Mr. Stanley Duntze Turner was entered in the possession of this land. Mr. Turner was also a co-sharer in the Shamlat area being an owner of Sidhbari Tea-Estate. Mr. Turner filed a suit for partition of Shamlat area land and in order to compromise that suit, the Zamindars of the Village Sidhbari agreed to relinquish their rights, title and interest in the suit land in favour of Mr. Turner. After the death of Mr. Turner his brother Mr. Stephon Davis Rilly Duntze Turner, became the owner and in possession of

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the suit land and then sold the land to Sh. Sukh Ram, the predecessor-in-interest of the plaintiffs for a valid consideration of Rs.27,000/-. Thereafter, the land mentioned above was entered in the ownership of Shamlat-deh- Hasab-Rasad-Malguzari and in possession of Sukh Ram Dass, predecessor-in-interest of the plaintiffs, as a tenant. It is significant to mention here that Sh. Sukh Ram Dass or Mr. Turner, never paid any rent etc., to the proprietary body or any other person with respect to the suit land. The land subsequently recorded in the ownership of Gram Panchayat and thereafter in the ownership of State of H.P., due to promulgations of various Acts of the State, but actually the plaintiffs or their predecessors-in-interest remained in possession of the suit land in assertion of their ownership rights. The plaintiffs or their predecessor-in-interest never accepted the rights of Gram Panchayat or State of H.P. The Gram Panchayat filed a suit title as Gram

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Panchayat Sidhbari vs. Sukh Ram in the Court of Senior Sub Judge, Kangra at Dharamsala with respect to the suit land and this civil suit was dismissed by the learned Senior Sub Judge, Kangra at Dharamsala on 20.2.1957 and it was held that Sh. Sukh Ram Dass or his successors-in-interest had become owner of the suit land by way of adverse possession. In an appeal preferred therefrom by the Gram Panchayat Sidhbari before the High Court of Punjab State at Chandigarh, the latter Court dismissed the appeal and it was held that Sh. Sukh Ram Dass or his successors-in-interests have become the owners of the suit land. It is submitted that the judgment of the High Court is binding upon the defendant, and the defendants/s name have wrongly been entered in the ownership column of the latest records after the passing of judgment of Hon'ble High Court. Sukh Ram died during the pendency of the earlier litigation and the plaintiffs are now the only legal heirs of Sh. Sukh Ram

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and Smt. Rukmani, widow of Sukh Ram had also died and the plaintiff are her only legal representatives. Hence the suit.

3. The defendants contested the suit and filed written statements, wherein, they have taken preliminary objections qua locus standi, cause of action, maintainability, non joinder of necessary parties, time barred, valuation, estoppel etc.. On merits, it is submitted that the suit land belongs to the State of H.P. and as such plaintiffs have no right, title or interest over the same. The land in dispute was recorded in the ownership of Panchayat Deh prior to the settlement and that was vested in the State of H.P. under the H.P. Village Common Land Vesting and Utilization Act, 1974 and accordingly the land was mutated in the name of the State of H.P. The mutation in favour of the State was never challenged before the competent authority within the prescribed period. The plaintiffs have filed this suit to

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take advantage of wrong revenue entries and as such is required to be put to the strict proof as no presumption of truth can be attached to wrong entries. The suit land is in exclusive ownership and possession of the State of H.P. It is denied that the plaintiffs and their predecessors-in-interest ever remained in possession of the suit land. The suit land is exclusively owned and possessed by the State of H.P. The State of H.P. was never a party to the suit decided by the learned Senior Sub Judge, Kangra on 20.2.1957. Moreover, the land in suit was vested to the State of H.P. , free from all encumbrances under the H.P. Village Common Land Vesting and Utilization Act, 1974. It is submitted that the State of H.P., was never a party to first appeal No.194/57 decided by the Hon'ble Division Bench of Punjab High Court on dated 6.4.1963. Moreover, the decree, if any, passed by the Civil Court is not executable against the State being not a party to the decree.

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 are owner in possession of the suit land as per jamabandi 1995-96, as alleged? OPP
2. Whether the plaintiffs are entitled for the relief of permanent injunction against the defendant on the suit land as alleged ?OPP.
3. Whether the plaintiff has no cause of action to file the present suit?OPD.
4. Whether the plaintiffs' suit is not maintainable?OPD.
5. Whether the suit of plaintiff is bad for non joinder of necessary parties? OPD.
6. Whether the suit is time barred? OPD.
7. Whether this Court has no jurisdiction to entertain the present suit?OPD.
8. Whether no legal notice U/s. 80 CPC was served to defendants?OPD.
9. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.
10. Relief.



5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court hence dismissed the plaintiffs' suit. In an appeal, preferred therefrom, by the plaintiffs/respondents herein, before the learned First Appellate Court, the latter Court allowed the appeal, and, reversed the findings recorded by the learned trial Court.

6. Now the defendant/appellant herein, has instituted the instant Regular Second Appeal, before, this Court, wherein it assails the findings, recorded in its impugned judgment and decree, by the learned first Appellate Court. When the appeal came up for admission, this Court, on 16.05.2008, admitted the appeal instituted by the defendant/appellant, against, the judgment and decree, rendered by the learned first Appellate Court, on the hereinafter extracted substantial questions of law:-

1. Whether the civil court can exercise the jurisdiction when there is specific bar under

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the H.P. Village Common Land Act, 1975 and the said act has provided the provision of appeal, revision, review etc.

2. Whether the first appellate Court and the trial Court can entertain the suit after the period of limitation.

**Substantial questions of Law No.1 and 2:**

7. Mr. Yudhvir Singh Thakur, learned Deputy Advocate General appearing on behalf, of, the appellant/State, has, contended with much vigour (a) that the judgment, and, decree rendered, by, the Hon'ble High Court of Punjab at Chandigarh, verdict whereof, is, comprised in Ex.PW1/D, whereunder, the predecessor-in-interest of the plaintiffs was hence declared, to, by prescription, arising, from his establishing qua his, with, an animus possedendi, rather holding open, continuous and hostile possession thereof, and, to knowledge, of, the plaintiff therein, namely Gram Panchayat Sidhbari, (b) rather to hence acquire title, vis-a-vis, the suit land, except qua two khasra number i.e. Kh. Nos. 74 and 1039, (c) has been fallaciously placed reliance, by, the learned

First Appellate Court, qua its also holding the apposite binding effect even, upon, the State, despite, the State of Himachal Pradesh, remaining not arrayed therein, as, a litigant, in the apposite array, of, litigating parties. Since, the binding and conclusive effect of Ex.PW1/B, is, strived to be eroded, merely, for non impleadment of the State of H.P., as a litigant, in the array of litigating parties, in the judgement, borne in Ex.PW1/D, (d) thereupon apart from the aforesaid, it is not deemed imperative, to, either dwell into or mete any adjudication, vis-a-vis, the trite factum, of, the predecessor-in-interest, of the plaintiffs, one Sukh Ram, who, is, arrayed therein, as, defendant/respondent, being or being not validly declared, to, by adverse possession hence become owner thereof, (e) invalidity whereof may arise, from, the verdict borne in Ex.PW1/D, being evidently obtained, by the predecessor-in-interest of the plaintiffs, by his, practising *suppressio veri or suggestio falsi*, factum

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whereof remains neither pleaded nor any evidence in consonance therewith, stands adduced. Nowat, in making, a determination, in respect, of, the conclusive, and, binding effect, of Ex.PW1/D, upon, the appellant/State of H.P., on anvil, of, it being not therein arrayed as a litigant, in, the array of litigating parties, (f) the imperative factum probandum, of, a statutory contemplation, being, borne in Section 4, of the Punjab Village Common Lands (Regulation) Act, 1961, and, its, squarely envisaging, the, vestment in the Panchayat deh concerned, of land(s) classified in the revenue Record, as, Shamlat deh, (g) hence with the Gram Panchayat Sidhbari, whereonwhom, the apposite statutory vestment, of, lands classified as Shamlat deh, was, rather to be made, (h) thereupon, when hence, the appropriate entity whereonwhom, the, apposite statutory vestment, of land classified, as, Shamlat deh, in the apt revenue record, was to be hence made, rather obviously stood

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arrayed, as, plaintiff/appellant, in, the verdict borne in Ex.PW1/D, (I) In aftermath, the imperative corollary thereof, being qua with the Panchayat Deh concerned, when visibly was pursuing, its, statutory cause, in, the earlier lis, especially, vis-a-vis, the statutory vestment, upon it, of, the suit khasra numbers borne therein, all whereof, except khasra numbers 74 and 1039, hold analogy, vis-a-vis, the suit khasra numbers hereat, (i) thereupon, the mere non impleadment of the State of H.P., as, a litigant in the apposite array of litigants, in the previous lis, whereon verdict borne in Ex.PW1/D, was pronounced, would not either denude nor dwindle either the efficacy thereof, nor belittle its conclusive, and, binding effect, even upon, the State of H.P., de hors it remaining unimpleaded, as a litigant in the apposite array, of, litigants in Ex.PW1/D. Provisions of Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 stand extracted hereinafter:-

4. Vesting of rights in Panchayats and non-proprietors. -

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land:-

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for, such, village, and, where no such panchayat, has been constituted for such village; vest in the panchayat on such date, as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the-

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Bosikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons in cultivating possession of shamilat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before, the 26<sup>th</sup> January, 1950.”

8. Mr. Y.S. Thakur, learned Deputy Advocate General also submits (i) that with a statutory bar, standing encapsulated, in Section 10 of the H.P. Village Common Land Vesting and Utilization Act, 1975, against, any order made within the ambit of the aforesaid Act, by any revenue officer, exercising jurisdiction thereunder, being unamenable, for redressal, through a civil suit, being instituted, before the Civil Court concerned, (ii) thereupon, the exercise of jurisdiction, by both the learned courts below, upon, the extant suit, being, in open transgression, of, the mandate, of the apt statutory bar engrafted, in apt statutory provisions borne, in Section 10 of the H.P. Village Common Land Vesting, and,

Utilization Act, 1975, (iii) besides the verdict pronounced by the learned First Appellate Court, being vitiated, for want of jurisdictional empowerment. However, the aforesaid contention addressed, before, this Court by the learned Deputy Advocate General, is, rudderless, (iv) especially when the apposite order, hence, vesting the suit land, in the panchayat deh concerned, is, for the trite reason, of, its making, rather arising from apt gross derogation(s), from, the conclusive, and, binding verdict, as, rendered in a previous lis, inter se the Panchayat deh concerned, and, the predecessor-in-interest of the plaintiffs, (v) thereupon, it acquired, an, entrenched vigour of nonest, besides voidness, (vi) hence dehors any statutory bar standing engrafted, in Section 10 of the H.P. Village Common Land Vesting, and, Utilization Act, provisions whereof are extracted hereinafter, it remained yet challengeable, by the plaintiffs, through, theirs casting hence a civil suit before the civil court concerned,



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(vii) conspicuously, when, the apposite bar is attractable only, vis-a-vis, orders made under apt exercise, of statutory jurisdiction, and, theirs being only afflicted, with, the vices of the imperative principle of audi alteram partem, being infringed or with vices, of, mis-appreciation or non appreciation, of admissible and relevant evidence, or qua orders which do not digress or depart, from, the apt statutory mandate nor depart or transgress, the, mandate, of, previously recorded verdicts, by any civil Court, vis-a-vis, suit khasra numbers, borne in the previous lis, and, khasra numbers whereof, hold, commonality, vis-a-vis, the suit khasra numbers hereat. Provisions of Section 10 of the H.P. Village Common Land Vesting and Utilization Act, read as under:-

**“10. Bar of jurisdiction.**-Save as otherwise expressly provided in this Act, no order made by the Collector or the State Government or any officer authorised by it, as the case may be, shall be called in question by any court or before any officer or authority.”

In other words, the statutory bar constituted, in, the apt provisions, borne in Section 10 of the H.P. Village Common Land Vesting and Utilization Act, against, the apt availment, of, a civil remedy, by the aggrieved, against any order made under the aforesaid Act, (a) is, neither attractable, vis-a-vis, any invalidly made orders, or orders made, in gross transgression, of, verdicts, pronounced by civil court, in an earlier lis, inter se, litigants, all of whom alike therewith also hold apparent commonality hereat, (b) also, when the suit khasra numbers borne therein, hold, the requisite apparent commonality, vis-a-vis, the suit khasra numbers hereat, (c) whereupon, hence with the principle of res judicata being attracted, application thereof, being enjoined, to, be made, only, by the civil courts concerned.

9. The above discussion, unfolds, that the conclusions as arrived by the learned first Appellate Court being based, upon a proper and mature appreciation of

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evidence on record. While rendering the 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 respondents/plaintiffs, and, against the appellant/defendant.

10. In view of the above discussion, there is no merit in the instant appeal and it is dismissed accordingly. In sequel, the judgment and decree rendered by the learned Additional District Judge (I), Kangra at Dharamshala, H.P. in Civil Appeal No. 46-D/03 is affirmed and maintained. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs.

**29<sup>th</sup> June, 2018.**  
**(jai)**

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