

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA No. 231 of 2007
Reserved on: 27.8.2019
Decided on : 30.8.2019

Ram Pal and others	Versus	...Appellants.
Naresh Kumar and Others	Respondents.

Coram:

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

Whether approved for reporting?¹ Yes.

For the Appellants:	Mr. N.K Sood, Sr. Advocate with Mr. Aman Sood, Advocate, for the appellants No. 1,2,4 and LRs No.3 (a) to 3 (e).
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For the Respondents:	Mr. Ajay Sharma, Sr. Advocate with Mr. Ajay Thakur, Advocate, for respondents No.1 to 3 and 6 to 9 and LRs No. 7(a), 7(b) and 7(e).
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Mr. Hemant Vaid and Mr. Hemanshu Mishra, Additional AGs with Mr. Vikrant Chandel and Mr. Y.S Thakur, Dy.AGs for respondent No. 10.

Sureshwar Thakur, Judge

The instant appeal is directed, against, the concurrently recorded verdicts, by both the Courts below, wherethrough(s), the suit preferred by Sh. Roshan Lal, the

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

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predecessor-in-interest of the plaintiffs/appellants herein (for short “the plaintiff”), for, rendition of a declaratory decree, for, possession, and, for, rendition, of, a decree, of, permanent prohibitory injunction, vis-a-vis, the suit land, and, against the defendants/respondents herein (for short “the defendants”), stood hence dismissed.

2. The aggrieved plaintiffs/appellants herein through, the instant Regular Second Appeal, cast before this Court, hence strive, to, beget the reversal of the afore verdicts, pronounced against them.

3. The brief facts of the case are, that, the land comprised in Khewat No. 901 min, Khatauni No. 4625 min, Khasra Nos. 433, 562 measuring 4 kanals 15 marlas, situated in village Badehrar Alias Dehlan, Tehsil and District Una, H.P. (for short” the suit land”) is alleged by the plaintiffs, to be Shamlat Deh, and, the defendants No. 1 to 3, were recorded in the column of cultivation in Hissedari Possession of it, whereas in the column of ownership there was an entry of

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panchayat and later on after 1974 the State is recorded as owner. Defendants No. 1 to 3 expressed their willingness to sell the suit land to the plaintiffs. The plaintiffs, in the month of April, 1973, agreed to purchase the suit land at the rate of Rs. 800/- per kanal and paid Rs. 3800/- in advance, as, sale consideration, and, earnest money, in the presence of the Pradhan of village Badehar alias Dehlan Sh. Wattan Ram, and, others in part performance of the contract and defendants No.1 to 3 delivered the possession of the suit land. The plaintiff constructed abadies both residential and commercial and cow-shed over the suit land in May, 1973, and, brought the other land under cultivation. He planted fruit bearing and other trees over this land. Defendants No. 1 to 3 had agreed, to, execute the sale deed in favour of the plaintiff, within, a, year, however, they did not do so and kept on assuring the plaintiff, that they will execute the sale deed in his favour after getting their names incorporated in the revenue records, in the column of ownership. Later on, instead of executing the

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sale deed, the afore defendants tries to dispossess the plaintiff, from, the possession of the suit land, which forced the plaintiff to approach the revenue authorities, for, correction of revenue entries in his favour, in, their records. On this, defendants No.1 to 3, filed a suit bearing No. 91 of 1989, before the Court of Sub Judge, Una, for, permanent injunction against the plaintiff, which remained pending, till, 17.1.1990, and, thereafter they got it dismissed in default. Not only this, the defendants No. 1 to 3, vide registered sale deed of 24.10.1989, sold the suit land, to, the defendants No. 4 to 7, despite, having full knowledge of agreement to sell, and, possession of the plaintiff, upon, the suit land. This sale deed dated 24.10.1989, is the result of collusion, and, connivance, inter-se, defendants No. 1 to 3, and, 4 to 7. The plaintiff approached the defendants, to, admit his right, and, to execute the sale deed in his favour, however, they refused to do so. The plaintiff has already been ready and willing, to, perform his part of the contract, therefore he issued a legal notice of dated

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7.12.1989, upon, the defendants, but of no avail. Hence, he filed a suit for decree of possession of the suit land by way of specific performance of contract, and, declaration and injunction.

4. The suit was contested by the defendants No. 1 to 7, on, the legal grounds of maintainability, locus standi, cause of action, and, limitation. On merits, it is alleged by these defendants, that, defendants No. 1 to 3 never agreed to sell the suit land to the plaintiff, as, alleged, and therefore there arises no question of receipt of payment of Rs. 3800/- by them. It is further alleged that the defendants No.1 to 3 never delivered the possession of the suit land to the plaintiff, nor, the plaintiff raised any construction over it. It has also been denied by the defendants that the plaintiff planted trees upon the suit land. They further pleaded that defendants No.1 to 3, were, in actual physical possession of the suit land, which, was sold by them to the defendants No. 4 to 7, for, a consideration of Rs.38000/- vide registered sale deed of 24.10.1989, and, now

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defendants No. 4 to 7, are, owners in possession of the suit land and they are bonafide purchaser.

5(A). The plaintiff filed replication, in, which he has reasserted, and, reiterated the averments, made in the plaint.

5. On the pleadings of the parties, following issues, were, framed by the learned trial Court:-

1. Whether the plaintiff is entitled for the relief of specific performance of contract of sale regarding land measuring 4 kanalas 15 marlas for consideration of Rs. 3800/- after declaring the sale deed dated 24.10.1989 by defendants No.1 to 3 in favour of defendants No. 4 to 7, as alleged? OPP

2. Whether the plaintiff is entitled for the relief of permanent injunction restraining defendants No. 1 to 7 from interfering in the possession of the plaintiff as alleged? OPP

3. If issue No.1 is not proved, whether the plaintiff is entitled for recovery of Rs.7000/- alongwith interest as alleged? OPP

4. Whether defendants No. 4 to 7 are owners in possession of the suit land and suit is not maintainable? OPD

5. Whether the plaintiff has no cause of action? OPD

6. Whether the suit is not within time? OPD

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7. Relief.

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

7. Now the appellants have instituted the instant Regular Second Appeal before this Court, wherein, they assail the findings concurrently recorded, in their impugned verdicts, hence by both the learned Courts below. When the appeal came up for admission, on 4.7.2008, this Court, admitted the appeal, on the hereinafter extracted substantial question, of law:-

“1. Whether judgment and decree of the Courts below suffer from misconstruction and mis appreciation of Exhibit PW-4/A (Report of Local Commissioner), Exhibit P-10 (order of Naib Tehsildar) and Exhibit P-9 order on injunction application in earlier suit, which has vitiated the findings?

2. Whether presumption of truth attached to the revenue record qua possession over the suit land in favour of the respondents stood cogently lawfully and

conclusively rebutted by documents exhibit PW-4/A, P-10 and the oral statements of PW-3, PW-4, PW-5 and PW-6?

4. Whether dehors the entitlement of the plaintiff for relief of specific performance, decree of permanent prohibitory injunction should have been passed against the defendants to protect the long and settled possession of the plaintiff.

5. Whether findings on issue No. 6 of the learned trial Court attained finality and in the absence of any independent challenge by the defendants/respondents to such findings at the appellate stage, the appellate Court was precluded from reversing such findings?

8. The learned counsel appearing for the aggrieved plaintiff, does not contest, the validity of the concurrent findings returned, upon the issue appertaining, to the, plaintiff being not entitled, for, rendition, of, a decree of specific performance, of, the oral contract of sale made, vis-a-vis, the suit land. However, he contends that dehors, his not contesting the returning of findings, against the plaintiff, upon, the afore issue, (i) the plaintiff being yet entitled, for, rendition of a decree of permanent prohibitory injunction, vis-a-vis the suit land (ii) as, the trite rubric appertaining therewith, is, comprised in the litigant, holding evident

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possession, vis-a-vis, the suit land, and, (iii) rubric whereof being established, by PW-4/A, the report of the Local Commissioner concerned, and, through Ex.P-9, exhibit whereof embodies, an, order of interim injunction rendered, by the learned Court concerned, during, the pendency of the apposite suit, wherethrough defendants were temporarily restrained from making any interference, vis-a-vis, the suit land (iv) and also therethrough he espouses qua the presumption, of, truth enjoyed by the reflections, as, occur in the revenue records, qua, the defendants holding possession, vis-a-vis, the suit land, rather also coming, to be rebutted.

9. For the reasons to be ascribed hereinafter, this Court, is not coaxed, to accept the afore contention, addressed by the learned counsel for the aggrieved plaintiff, (i) as, a perusal of Ex. P-10, exhibit whereof, is, an order made by the Naib Tehsildar settlement, in the proceedings drawn, inter-se, the predecessor-in-interest, of, defendants No. 1 to 3, and, the predecessor-in-interest of the plaintiffs, and, wherein the afore

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were respectively arrayed, as, non-applicants and applicants, though unfolding qua an order being made, vis-a-vis, the predecessor-in-interest, of, the plaintiff, for, hence the latter being incorporated, in, the column of possession, of, the revenue records appertaining, to, the suit land. However, thereafter there is no implementation of the afore order, as, made by the Revenue Officer concerned, (i) and, further thereonwards, though, there are reflections cast therein, qua in the proceedings earlier thereto, drawn, by the authority concerned, rather the predecessor-in-interest of the defendants No. 1 to 3, being served, and, also though reflections, are, also borne therein, qua despite theirs being granted opportunities, to, adduce evidence, for, rebutting the evidence adduced, by the predecessor-in-interest of the plaintiff, theirs not availing them. However, any purported presumption of truth, as, attached, vis-a-vis, the afore recitals borne in Ex.P-10 is, eroded, given the defendants contesting the validity, of, the afore order, and, also when they contest qua amenability, of,

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any reliance being placed thereon, hence it was enjoined, upon, the plaintiff, rather for, stripping the effect of the afore contest(s), as, reared by the defendants, hence ensure the placing, on record, of, all the proceedings, drawn prior, to the making of Ex. P-10, (i) and, theirs carrying reflections qua the predecessor-in-interest, of, the defendants concerned being served, and, the latter thereafter appearing, before the authority concerned, (ii) and, also reflections qua theirs being permitted, to, avail all opportunities, to, make a valid contest, vis-a-vis, the propagations, as, raised by the predecessor-in-interest, of, the plaintiff (iii) however, apparently with all the afore record remaining un-adduced, thereupon, the effect of the afore omission, is, qua hence, all the afore reflections cast therein rather losing force, and, validity, (iv) and, it also being construable qua Ex.P-10 being rendered, beyond the ambit, and, scope, of, the principle(s) of audi artem partem, or, it emanating behind the back of the predecessor-in-interest of

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the defendants, and, hence no reliance being meteable thereon.

10. Be that as it may, the learned counsel for the aggrieved plaintiff, has also relied, upon, the report of the Local Commissioner, as, stood tendered, before the learned Civil Judge concerned, and, stood prepared, by the counsel appointed, as, local commissioner, for, visiting the relevant site, for, his determining, whether the plaintiff or the defendants concerned, extantly holding possession, vis-a-vis, the suit land, (i) and, he submits qua with the afore report being relied, upon, by the Civil Judge concerned, in, his making an affirmative order, upon, an application, cast under the provisions of Order 39 Rule 1 and 2 CPC, thereupon the report of the local commissioner, embodied in Ex. PW-4/A, being amenable, for, reliance being meted thereon. However the afore submission, cannot prevail, upon, this Court, as, its clout is waned by the learned counsel, for the plaintiff, omitting to, place on record, the final verdict rendered, upon,

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the civil suit concerned, during, pendency of proceedings whereof, rather the afore order, of, ad-interim injunction was rendered, by the Civil Judge concerned (a) whereas it comprising, the firmest, and, the most formidable evidence, emphatically qua hence, upon, the afore verdict acquiring binding, and, conclusive effect, hence, the afore order of ad-interim injunction, made upon, the application, cast under the provisions of Order 39 Rule 1 and 2 CPC, emerging thereinto, and, hence concomitantly, the recitals, borne in the report of Local Commissioner comprised in Ex. PW-4/A acquiring likewise binding, and, conclusive effect. Contrarily, the effects of the afore omission, to place on record, the afore conclusive verdict, made upon, the apposite civil Suit, hence by the plaintiff, hence rendering Ex. PW-4/A, being construable, to, be rather holding no legal efficacy, (a) moreso when its preparation, is not made, at the instance of the revenue officer concerned, rather is prepared, by an advocate appointed, as, a local commissioner, who, obviously was neither possessed of

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the relevant records nor was capacitated, to, make candid and clear determination(s), vis-a-vis, the plaintiff or the defendants holding possession, of, the suit land.

11. In view of the above, I find no merit in this appeal, and, the same is accordingly dismissed, alongwith all pending applications. The impugned judgment(s) is/are maintained and affirmed. Substantial questions of law are answered accordingly No costs. Records be sent back.

30th August, 2019
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(Sureshwar Thakur),
Judge.