

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

RSA No. 636 of 2008

Reserved on : 15.11.2019

Decided on : 29.11.2019

Bhag Chand

..Appellant

Versus

Jitender and others

..Respondents

Coram

Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? yes

For the Appellant: Mr. Romesh Verma,
Advocate.

For the Respondents : Mr. Hemant Vaid,
Advocate.

Sureshwar Thakur, Judge

The instant appeal, stands directed, by the
aggrieved defendant, against, the concurrently
recorded verdicts, hence, by both, the, learned

Courts below, where through the plaintiffs' suit, for, rendition of a decree, of, mandatory injunction, vis-à-vis, the suit khasra Nos, and, against him, rather became decreed. When the appeal came for hearing, this Court admitted, the, instant appeal, on, the hereinafter extracted substantial questions of law:

1. *Whether in view of the compromise between present appellants and late Shri Daulat Ram, father of the respondent No. 1, which has been brought on record, exhibit D-4 and in view of the statements of parties exhibit D-6 and D-7, presumption of correctness is attached to revenue entries in favour of respondent stand rebutted?*
2. *Whether both the Courts below have acted illegally by failure to consider and appreciate documentary evidence produced by appellants Ext. D-1 to D-7 pertaining to previous civil suit No. 74/1 of 1990 according to which, dispute pertaining to suit property in khasra No. 66, stand*

amicably decided and therefore, parties are bound by same.

3. Whether there are admissions on the part of Respondent about claim of appellant. In the statement of PW-1 Jitender as well as in documents Ext. D-4 to D-7.

4. Whether the presumption of correctness attached to the revenue entries in favour of respondent stand rebutted on the basis of documents Ext. D-1 to D-6 and D-7 and therefore, respondent/plaintiff is not entitled to any equitable and discretionary relief of injunction?

2. The learned counsel appearing, for, the aggrieved defendant, has contended, with much vigor, before this Court, (i) that when in the earlier suit, hence engaging the predecessor in interest, of, the hereat plaintiff, and, the defendant, rather on, anvil, of, a compromise drawn inter se both, and, as embodied in Ext. D-4, an order, in, concurrence therewith, as, embodied in Ext. D-5, became pronounced, (ii) and also when, the, suit

khasra Nos borne in the earlier suit, and, similar, vis-à-vis, the, instant suit khasra Nos, (iii) thereupon with, the, absolute congruity, hence emerging interse the earlier lis, and, vis-à-vis, the extant lis, (iv) thereupon, the, principle of constructive resjudicata, rather becoming fully operationalized, and, hence the apt statutory stopping embargo, rather works fully against the plaintiff, whereupon, he is barred, to, re-institute, hence, subsequent, to, the earlier concluded lis, appertaining, to, the extant khasra Nos, and, also, involving parties, bearing interse similarity(ies), rather, the, extant suit. However, the afore submission cannot hold any vigor, as a perusal, of, Ext. D-4, exhibit whereof, comprises, the, apposite compromise deed, drawn, in the earlier suit, bearing No. 74/1 of 1990, rather omits, to unveil, the, khasra Nos, qua wherewith, the, afore compromise, as, embodied in Ext. D-4, became

drawn, and, also in concurrence wherewith, Ext. D-4, became pronounced. The afore omission, starkingly, and, un-mistakably , rather disrobes the learned counsel, for, the defendant, to, hence contend, qua hence, all, the requisite imperative completest, and, fullest apt congruities, emerging, (v) and comprised in, interse congruity, hence interse, the, khasra Nos in the earlier suit, and, in the extant suit, rather surfacing. Consequently, he also can not contend, that the litigation, in, the earlier suit, becoming the apt acerbic common res-controversia, or the common ire litigious litigation interse, the, contesting litigants', hereat, (i) nor thereupon, he, can contend, with any vigor, that, their occurring, rather the, completest interse analogy, interse, the earlier compromise, borne in Ext. D-4, and, vis-à-vis, the extant suit khasra Nos, (ii) nor reiteratedly, and, obviously, he can

make any further contention, that, the instant suit, becomes barred, by, attraction hereat, of, the stopping principle, of, constructive resjudicata.

3. Be that as it may, the learned counsel, for, the aggrieved defendant, has also cast, a challenge, vis-à-vis, the, concurrent pronouncement(s), made against him, and his afore submission, is, rested entirely, upon, an entry, existing in Ext. P-A, exhibit whereof, is, a Jamabandi, appertaining to the suit khasra Nos, and, wherein one Pyare Lal, is, described, to be holding possession, of, the suit khasra Nos, and, (i) thereupon(s), he hence contends, that, the trite and indispensable, canon, hence for empowering, both the learned Courts below, to, render an efficacious decree, of, permanent prohibitory injunction, hence comprised in the plaintiff, rather holding possession, of, the suit khasra Nos, becoming perse de-established, (i)

hence, the, concurrently recorded pronouncement(s), against, the defendant, become legally infirm, and, also frail, (ii) however, the afore made submission, is, rudderless, as, the counsel for the defendant, has, remained unmindful, vis-à-vis, the afore Pyare Lal, hence theirin becoming, described, to, be holding hence possession, of, the suit khasra Nos, yet, when the factum, of his holding possession, of, the suit khasra Nos, is, enunciated, as, billasift, or without any status, and further, when, the suit land, is, described as "gair mumkin", rather than, as, a suit path, as claimed, by, the aggrieved defendant,(iii) besides even though, the afore entry carries, a, presumption of truth, and, for want, of, apt cogent rebuttal evidence, becoming adduced, it, acquires conclusivity, (iv) nonetheless, the, presumption of truth, enjoyed, by the afore entry, dehors, it, not conferring any

empowering vestment, of, locus standi, in, the, plaintiff, and, de hors, it enjoining him to, for, blunting the, defendants, any purported valid espousal, qua his addition, hence, in the apposite array, of, litigants rather being both just and essential, given, his being purportedly both, a, proper and necessary party, rather make him, a party, in the extant lis, yet becomes belittled, by the visible and trite factum, as emerges, from, Ext.D-4, exhibit whereof, is, the copy, of, the plaint, instituted in the earlier suit, (v) wherein the plaintiff, therein, the defendant in the instant suit, rather claims qua his purchasing the suit khasra Nos., from Pyare Lal, and, yet his, not, adducing, on record, the, appositely executed, qua him, any registered deed, of, conveyance, rather by Pyare Lal, (vi) thereupon an inference, is, galvanized, qua the afore entry, of, possession, of, Pyare Lal, vis-à-vis, the, suit khasra Nos, rather

becoming acquiesced by the aggrieved defendant, to be an erroneous reflection, vi) and, thereupon, the afore entry, in, the revenue record, hence echoing, vis-à-vis, Pyare Lal, holding possession, of, the extant suit khasra Nos, becoming both blunted and effaced, vis-à-vis, its vigor, besides the plaintiff holding, the, apposite locus standi.

4. In aftermath, Pyare Lal was neither a proper nor a necessary party, in, the extant lis, nor had any locus standi, rather, the plaintiff, is, also hence concluded, to be, holding alongwith, the, apt recorded status, hence as owner(s), vis-à-vis, the suit property, rather also, the, status, as, valid possessor thereof, (i) thereupon, he was fully entitled to claim, and, seek, rather pronouncement(s), of, the espoused decree(s), of, permanent prohibitory injunction, as aptly, made hence by both the learned Courts below.

The substantial questions of law are answered accordingly.

5. Consequently, there is no merit in the appeal and the same is dismissed. The impugned judgment(s) and decree(s), pronounced by both the learned Courts below, are, affirmed and maintained. All the pending application(s), if any, are also disposed of.

29.11.2019
Kalpana

(Sureshwar Thakur)
Judge