

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No. 4081 of 2013.

Reserved on : 26th November, 2019.

Decided on : 29th November, 2019.

Smt. Vidya Devi

...Appellant-defendant.

Versus

Sh. Mathu Ram

....Respondent-Plaintiff.

Coram:

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

Whether approved for reporting?¹ Yes.

For the Appellant: Mr. R.K. Bawa, Senior Advocate
with Mr. Ajay Kumar, Advocate.

For the Respondent: Mr. Dalip K. Sharma, Advocate.

Sureshwar Thakur, Judge.

The plaintiff's suit for rendition of a decree, for, permanent prohibitory injunction, vis-a-vis, the suit khasra numbers, and, against the defendant, became dismissed, by, the learned trial Court. The prime reason, as, accorded, by the learned trial Court, for, declining the

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

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espoused relief to the plaintiff, became embedded, in, the factum, vis-a-vis, the plaintiff not being in possession, of, the suit property, (i) and, thereupon, when, the apt *sine qua none*, for rendition, of, a valid decree, of, permanent prohibitory injunction, is, comprised, in, the, plaintiff, holding, evident possession, of, the, suit property, remained unsatiated, thereupon, the espoused decree becoming unrenderable, vis-a-vis, the plaintiff.

2. The aggrieved therefrom plaintiff, cast, thereagainst, an, appeal before the learned First Appellate Court, and, the latter court after allowing, the, application moved therebefore, and, cast under the provisions of Order 6, Rule 17, of, the CPC, rather proceeded to make an order, of, wholesale remand, of, the lis, vis-a-vis, the learned trial Court.

3. The aggrieved therefrom defendant, one Vidya Devi, hence, for casting an onslaught thereon, has,

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thereagainst, instituted the extant appeal, before this Court.

4. Normally, an order of wholesale remand would become invalidated, (i) unless, the learned first Appellate Court, after striking a vital issue arising, from the pleadings, given it rather remaining earlier unstruck, by, the, learned trial Court, (ii) and, also when the vital issue, as, formulated by the learned First Appellate Court, also holds, the, deepest, and, entrenched interconnectivity, vis-a-vis, other issues, and, also necessarily hence enjoins, the, returning(s), of, fresh findings, upon, all issues. Since, the plaintiff's suit, was, a simplicitor suit for rendition, of, a decree for permanent prohibitory injunction, vis-a-vis, the suit khasra number, and, against the defendant, (iii) and, when for the afore reason, the afore espoused relief, became pronounced, to, be hence unrenderable, vis-a-vis, the plaintiff, rather, upon, the, pronounced anvil, vis-a-vis, the plaintiff acquiescing, qua

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his not holding possession, vis-a-vis, the suit khasra number(s), (iv) besides when there is no apparent interconnectivity inter se the issues struck by the learned trial Court, and, whereon findings adversarial, to, the plaintiff, became recorded, and, thereafter resulted hence in the dismissal, of, the plaintiff's suit, (v) nor when hence, before the learned first Appellate Court, any espousal, became made, vis-a-vis, the learned trial Court, despite pleadings hence necessitating, the, striking, of, a, vital issue, as, germinating therefrom, rather, the apt vital issue remained earlier unstruck, (vi) and, it after striking the requisite vital issue, it became thereafter validly empowered, to make, an, order, of, remand, of the lis, to, the remandee court, for, enabling, the, latter rather receiving evidence thereon. The afore recourings, are, permissible, within the ambit, of, Order 41, Rule 26 of the CPC. Imperatively the innate nuance, of, the afore statutory provisions, is, qua the learned first

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Appellate Court, rather maintaining the appeal, on its docket, and, after the order of remand, hence, becoming complied with hence by the learned trial Court, and, thereupon, the learned Appellate Court rather within the ambit of Order 41, Rule 26 of the CPC, hence, permitting the apposite aggrieved, to, within the time fixed by it, hence, prefer objections therebefore against the findings rendered, upon, the relevant issue by the learned trial Court, and, conspicuously, upon, the latter receiving them, on remand. Significantly, since, the vital issue, purportedly arising from the pleadings, of, the parties, earlier remained unstruck nor also become struck by the learned first Appellate Court, thereupon, the afore recouring becomes, a, grossly inappropriate endeavour, by, the learned first appellate Court, and, hence, renders the order of wholesale remand, of, the lis, to, the remandee court, to, concomitantly become grossly inappropriate.

5. Even if assumingly, when, the learned first appellate Court after making an affirmative pronouncement, on, an application cast theretofore, by, the respondent-plaintiff, rather, under, the provisions of Order 6, Rule 17, of, the, CPC, wherein, the espoused relief therein, is, for hence leave becoming accorded, for, incorporating in the plaint, the, hereinafter extracted pleadings:-

“The plaintiff, therefore for himself and for other co-owners, pray to seek the relief of possession of the landed property with all sort of crop or any sort of plants thereon comprised in Khasra No.505, measuring 0-02-74 hectares, situated in mauza Madhawani, Tehsil Kumarsain, District Shimla, H.P. against the defendant. And further, the plaintiff pray that the defendant be injuncted with the rule of perpetuity from causing any sort of interference, directly or indirectly into the peaceful possession and enjoyment of the property comprised in khasra No.505.”

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(a) besides when the strived, for, amendment, hence, is, clearly suggestive, vis-a-vis, the suit becoming, filed, by the plaintiff for her benefit, and, also for the benefit, of, other co-owners, and, also is, suggestive, of, the relief, of, possession becoming espoused, vis-a-vis, the suit khasra numbers. Yet, for the reasons to be assigned hereinafter even, the, allowing, of, the afore application, hence, by the learned first appellate Court, is, a grave mis-befitting endeavour, (b) as, therethrough, the learned first appellate Court, has, misbefittingly approbated, the, endeavour of the plaintiff, to, completely change the nature, complexion, and, tenor, of, the pleadings initially constituted in the plaint, (c) wherein, the plaintiff, had, espoused, for, rendition of a decree, of, permanent prohibitory injunction, and, espousal whereof rather, for the afore stated reasons, became declined, hence, by the learned trial Court. The afore endeavour, before the learned First Appellate Court also appears to be a

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disguise or a stratagem deployed by the plaintiff, to overcome the dismissal, of, the afore suit, for, injunction, wherein, he failed, to, prove qua his holding the apt possession of the suit property, imperatively rather, the, factum, of, possession thereof, became acquiesced, by, the plaintiff, to be not rather within his possession. The approbation, of, the afore belated endeavour, of, the plaintiff, when combined alongwith, his, afore deployed clever stratagem, merely, for, hence, begetting inapt changes in the nature, and, complexion of the civil suit, has, resulted in gross breaches, of, the governing principles, appertaining, to, the allowing, of, an application cast, under, Order 6, rule 17 CPC, (d) and, also has breached, the, afore principles relating, to the validities, of, making an order, of, wholesale remand. Preponderantly, the, acquiescence, as, made by the plaintiff qua his not holding possession, of, the suit khasra numbers, validly dis-entitled him, to the espoused

relief, of, permanent prohibitory injunction. Moreover, the afore, acquiescence carries, the, further effect qua, the, plaintiff hence indulging in proactive suggestio falsi, and, suggestio veri, in his projecting, the, requisite factum probandum in the initially instituted suit, (d) thereupon, the subsequent therewith endeavour, as made, before the learned Appellate Court, after dismissal, of, his suit, rather to incorporate, in, the plaint, the relief, of possession, rather warrants its becoming declined, hence, for, ensuring this court, not condoning, the, afore pervasive vices initially, as, indulged into by the plaintiff.

6. For the foregoing reasons, the extant appeal is allowed, and, the order allowing the application, cast by the plaintiff, under Order 6, Rule 17 of the CPC, is, set aside, and, thereafter, the, order made by learned First Appellate Court, hence, making the wholesale remand of the lis, vis-a-vis, remandee court, is, also set aside. Consequently, the learned First Appellate Court, is,

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directed, to, in accordance with law make a decision afresh, upon, Civil Appeal No. 24 of 2010. The parties are directed to appear before the learned trial Court on 30th December, 2019. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

29th November, 2019.
(jai)

(Sureshwar Thakur)
Judge.