

(2013) 03 SHI CK 0007

High Court of Himachal Pradesh

Case No: Regular Second Appeal No. 125 of 2013 (C)

Lekh Ram, Jeet Singh
and Mohan Singh

APPELLANT

Vs

Shri Durga and Others

RESPONDENT

Date of Decision: March 18, 2013

Hon'ble Judges: Sanjay Karol, J

Bench: Single Bench

Advocate: P.S. Goverdhan, for the Appellant;

Final Decision: Dismissed

Judgement

Sanjay Karol, J.

This is the plaintiffs' regular second appeal filed against the judgments passed by the Courts below. The concurrent findings of fact have been assailed by the appellants herein. The plaintiffs filed a suit for declaration and injunction against the defendants to the effect that they are owner-in-possession of the suit land and the revenue entries recording the fact to the contrary, are illegal. The suit was contested by the defendants, according to whom, their predecessor-in-interest Shri Kewal Ram, was the owner in possession and the entries in the revenue record since the year 1958, correctly reflected the position at the ground level. Also, the defendants are in possession of the same.

2. It is alleged by the plaintiffs that during the pendency of the suit, which was filed sometime in the year 2001/2002, a compromise was entered into between the parties on 1.1.2006, which fact also stood denied by the defendants.

3. Based on the pleadings of the parties, the trial Court, framed the following issues on 25.06.2008 and 03.03.2011:-

1. Whether the plaintiff is entitled to the relief of declaration, as prayed? OPP

2. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPD

2-A Whether any compromise was executed between the parties to the suit which was reduced into writing dated 1. 1.2006 with respect to the suit land? OPP

3. Whether the present suit is not maintainable? OPD

4. Whether the present suit is barred by limitation? OPD

5. Whether the plaintiff is estopped from filing the present suit? OPD

6. Whether the plaintiff has got no cause of action, as alleged? OPD

7. Relief.

4. The Trial Court dismissed the plaintiffs' suit on all counts, in terms of judgment and decree dated 27.12.2011 passed in Civil Suit No. 36/1 of 2006/04/02, titled as Lekh Ram and others versus Durga and others. Aggrieved thereof, plaintiffs filed Civil Appeal No. 71-S/13 of 2012, which also stands dismissed by the learned Additional District Judge, Solan, District Solan, H.P., in terms of judgment dated 5.10.2012. The findings of fact stood affirmed.

5. Having heard learned counsel for the appellants and perused the record, I am of the considered view that there is neither any illegality nor any perversity, warranting interference, with the concurrent findings of fact recorded by the Courts below. I also find that no question of law, much less, substantial question of law arises for consideration in the present appeal.

6. Learned counsel for the appellants has referred to and relied upon the decision of the Apex Court in [Anil Rishi Vs. Gurbaksh Singh](#), to contend that the trial Court erred in fixing the onus of issue No. 2-A on the plaintiffs. In my considered view, the decision is totally inapplicable to the instant case. Moreover, the plaintiffs cannot be permitted to take this plea at such a belated stage and in these proceedings. No such challenge was there earlier.

7. That apart, learned counsel for the appellant fairly read out the entire statement of the defendants' witness as recorded by the trial Court. The defence taken by the defendants is to the effect that a compromise was entered into between the parties to the effect that the parties shall withdraw their respective suits initiated by them. But however, the compromise placed on record by the plaintiffs was not the one which was entered into between the parties inasmuch as the first two pages were changed by the plaintiffs. All these aspects have been gone into by the Courts below and I see no reason to interfere with the concurrent findings of fact recorded by the Courts below while deciding this issue. Significantly, the defendants through their predecessor-in-interest have been in possession of the suit premises since the year 1958 and it is only in the year 2001/2002 that defendants challenged the entries by way of filing the present civil suit.

Hence, for all the aforesaid reasons, I see no ground to interfere. Accordingly, the present appeal stands dismissed.