
State of H.P. Vs Anant Ram and Others

None

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 3, 2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 100, 100(5)#Himachal Pradesh Land Revenue Act, 1954 " Section 163, 171

Hon'ble Judges: V.K. Ahuja, J

Bench: Single Bench

Final Decision: Allowed

Judgement

V.K. Ahuja, J.

This is a regular second appeal filed by the appellant/defendant u/s 100 of the CPC against the judgment and decree, dated

11.5.1999, passed by the learned District Judge, Bilaspur, H.P., vide which he affirmed the findings of the learned Sub Judge, Bilaspur, H.P.,

dated 28.12.1990, decreeing the suit of the respondent/plaintiff for declaration and permanent injunction.

2. Briefly stated the facts of the case are that respondent Pohlo Ram, hereinafter also referred to as the plaintiff, now represented by his legal

representatives respondents No. 2 to 11, filed a suit for declaration and permanent injunction as against the appellant/State of H.P., hereinafter also

referred to as defendant. It was alleged by the plaintiff that he is owner in possession of the land measuring 7 bigha 15 biswa, situated in village

Pehlwana, as detailed in the plaint. The plaintiff alleged that he is in possession of the suit land since June, 1954 openly, peacefully and continuously

to the knowledge of the defendant. He alleged that he has become owner by way of adverse possession in October, 1984 after the lapse of 30

years, hence the suit for declaration and permanent injunction filed by him.

3. Defendant took up preliminary objections in regard to locus standi, estoppel, jurisdiction etc. On merits, it was denied that the plaintiff was in

open and peaceful possession of the suit land since 1954. It was pleaded that he had recently encroached upon some portion of the land and as

such he was proceeded against u/s 163 of the H.P. Land Revenue Act and was ordered to be ejected from the suit land by the Assistant Collector

vide his order dated 12.5.1983. Earlier also, a similar order was passed on 21.11.1981 and on appeal the case was remanded back by the

Collector, Sadar. Thereafter on 24.10.1986, the Assistant Collector passed an order of ejectment of the plaintiff from the suit land.

4. On the pleadings of the parties, the following issues were settled by the learned trial Court:

1. Whether the plaintiff is owner in possession by way of adverse possession, as alleged? OPP

2. Whether the plaintiff is entitled for the relief of permanent injunction as alleged? OPP

3. Whether the present suit is not maintainable? OPD

4. Whether the plaintiff has no locus standi? OPD

5. Whether the plaintiff is estopped from filing the present suit by his act, conduct and deed? OPD

6. Whether the suit is time barred? OPD

7. Relief.

5. Parties led their evidence and the learned trial Court, vide its judgment, decreed the suit of the plaintiff for declaration and permanent injunction.

On appeal, those findings were affirmed by the learned District Judge.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. The appeal was admitted by this Court on the substantial question of law as to whether the decree for declaration can be granted in favour of

the plaintiff without assailing the ejectment order passed u/s 163 of the H.P. Land Revenue Act.

8. The first question, which arises for consideration, is whether the findings of the learned trial Court, affirmed by the learned Appellate Court, are

correct that the suit for declaration could be decreed in favour of the plaintiff and that too without assailing the ejectment order passed u/s 163 of

the H.P. Land Revenue Act. Once the appeal has been admitted for hearing, there can be reappraisal of evidence led before the learned trial Court

and the findings recorded by the learned Appellate court in this regard can also be assailed.

9. The submissions made by Mr. J.S. Guleria, learned Assistant Advocate General for the appellant, were that there were no specific assertions

made in regard to the fact that the plaintiff was in open, peaceful and hostile possession and in what manner. He further submitted that the

assertions so made were not substantiated by the plaintiff by leading cogent and reliable evidence and as such those findings holding the plaintiff

entitled to the decree for declaration are incorrect.

10. To substantiate his plea that the plaintiff has to plead and prove these assertions made in the plaint in regard to adverse possession, the learned

Assistant Advocate General, had relied upon the decision in State of Rajasthan Vs. Harphool Singh (Dead) Through His L.Rs., wherein it was

observed by their Lordships in para 12 of the judgment that the possession required must be adequate in continuity, in publicity and in extent to

show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting

to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. A

reference was also made to the decision of Privy Council wherein it was observed that the possession must be overt and without any attempt of

concealment so that the person against whom time is running, ought, if he exercises due vigilance, to be aware of what is happening and if the rights

of the Crown have been openly usurped, it cannot be heard to plead that the fact was not brought to its notice.

11. On this point, it was submitted by the learned Counsel for the respondents that there were specific allegations made by the plaintiff in regard to

his hostile title and as such, the pleadings were specific and evidence was also led in this regard.

12. Coming to the pleadings of the plaintiff, in para 3 of the plaint, he had alleged that he is in continuous and hostile possession of the suit land

since October, 1954 peacefully, openly and to the knowledge of the State of H.P. He did allege that he was in continuous possession over the suit

land since October, 1954, but he never alleged as to what overt act was done by him to show to the true owner i.e. the State of H.P. that he has

acquired the possession of the land in question and has asserted his hostile title to the knowledge of the true owner. Nothing has been alleged in the

plaint that he raised construction over the land in question and as such his title became adverse as against the true owner from the year 1954

onwards.

13. To substantiate his allegations, the plaintiff stepped into the witness box as PW-2 and stated that he is in possession since 1954. He only

referred to the oral directions given by the Patwari to him to vacate the possession, but the plaintiff stated that he refused to do so. In regard to the

hostile title or the fact that he raised any construction over the suit land or did any such overt act, the statement of the plaintiff was silent and it

suggests only of long possession and not of adverse possession. The possession, howsoever long it may be, cannot ripen into adverse possession

unless some overt act is done by the person in possession, which can be treated as notice to the true owner. In cross examination, the plaintiff had

admitted his knowledge in regard to the order of ejectment passed as against him, though he stated that he does not remember it.

14. The statement of the plaintiff has been sought to be corroborated from the testimony of PW-1 Garja Ram, Patwari, who had prepared the

Tatima Ext.PW-1/A on 2.12.1989. He also stated that when he went to the spot, the land was vacant and no fields were there. He has stated that

he was posted as Patwari of the area since 4.8.1989 only and, therefore, he has referred to the fact that the land was still uncultivated.

15. In addition, a reference can also be made to the revenue records. A perusal of Missal Hakiat Ext.PW-1/B shows that the land is entered in the

name of State of H.P. and in illegal possession of Pohlo. The kind of the land entered is Charand. Ext.PW-1/C, copy of the jamabandi for the year

1983-84, shows the ownership of State of H.P. and the kind of the land is entered as Charand Jungle Dehati. There is nothing to suggest that the

plaintiff was in possession of the suit land. Similar entries are also there in Ext.D-1, copy of jamabandi for the year 1983-84, Ext.D-2 copy of

jamabandi for the year 1988-89 and Ext.D-3 copy of Khasra Girdavari from Kharif 1984 to Rabi 1989. All these documents show the ownership

of the State of H.P. and the kind of land as Charand and not recorded in possession of the plaintiff. Therefore, it is clear that the possession of the

plaintiff was recorded, for the first time and has been shown in the copy of Missal Hakiat Istemal, and it also does not show that any construction

had been raised over the land in question.

16. From the above discussion, it follows that the presumption of correctness was attached to the copies of the jamabandi entries showing the land

as Charand and entered in the ownership of State of H.P. and only in the Missal Hakiat, there is an entry of possession of the plaintiff over the suit

land. However, this long possession, even if presumed to be there, does not ripen into adverse possession and, therefore, both the courts below

have considered the long possession, if any, only from the solitary statement of the plaintiff leading to the conclusion that it was adverse, which

findings are not correct and are not based upon proper appreciation of evidence led by the parties.

17. Coming to the question as to whether the suit for declaration could be decreed in spite of the fact that no prayer was made assailing the

ejectment order passed u/s 163 of the H.P. Land Revenue Act. The copies of the orders passed u/s 163 of the said Act have been placed on

record. Ext.D-6 is the copy of order, dated 29.10.1986 and Ext.D-7 is the copy of order sheet dated 30.10.1985, which shows that an order

was passed as against the original plaintiff and the said order has never been challenged by the plaintiff when he filed the suit on 12.12.1989. The

order, dated 12.5.1983, u/s 163 of the H.P. Land Revenue Act was already in existence and until and unless the plaintiff assailed the said order or

got it quashed from the Civil Court, he was not entitled to the decree for declaration, which had cast a cloud to his rights and even in spite of the

passing of the declaration decree and no order having been passed for quashing of the said order, no relief of declaration could have been legally

granted in favour of the plaintiff. The plaintiff never assailed these orders before the Civil Court and got no relief in that regard and even if there was

a decree for declaration in favour of the plaintiff, it was not binding and did not lead to any relief having been granted in favour of the plaintiff.

18. During the course of arguments, the learned Assistant Advocate General for the State had also raised a plea in regard to the jurisdiction, which

was also taken before the learned trial Court in the written statement filed by the defendant, but neither any issue was framed nor any findings were

given by both the courts below on this point. It was submitted by the learned Counsel for the respondents that the appeal was admitted only on

one substantial question of law, as mentioned above. It was never admitted on substantial question of law in regard to the jurisdiction and as such

the plea of jurisdiction cannot be raised by the appellant at this stage.

19. The learned Assistant Advocate General submitted that this plea could be raised even if it had not been specifically raised at the time of filing of

the appeal or the appeal was not admitted on this substantial question of law.

20. My attention has been drawn to the provisions of Section 100 of the CPC in regard to the second appeal, as observed by their Lordships in

Dharam Singh Vs. Karnail Singh and Others, Section 100(5) of the CPC reads as follows:

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the

case does not involve such question:

The observations made in para 14 are also relevant and are being reproduced below:

The plea about the proviso to Sub-section (5) of Section 100 instead of supporting the stand of the respondent rather goes against them. The

proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons

to be recorded, the appeal on any other substantial question of law. The expression ""on any other substantial question of law"" clearly shows that

there must be some substantial question of law already formulated and then only another substantial question of law which was not formulated

earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question.

21. It follows from the above discussion that once the appeal has already been admitted and substantial question of law has been framed, the

arguments can be heard even on another substantial question of law which arises from the arguments advanced by the learned Counsel for the

parties. The plea in regard to jurisdiction was taken before the learned trial Court and was not agitated before the courts below, but since it is

material question involving jurisdiction of the Civil Court, this Court is not precluded from hearing arguments on this substantial question of law.

22. The jurisdiction of the Civil Court is barred u/s 171 of the H.P. Land Revenue Act, 1953 and as such the suit for declaration and injunction

could not have been filed before the learned trial Court. The only relief to which the plaintiff was entitled was challenging the order passed by the

Revenue Officer u/s 163 of the said Act being illegal and void, which was never done by the plaintiff and as such the Civil Court had no jurisdiction

to grant the decree in question in favour of the plaintiff without a challenge having been made to the ejectment order, which remains final and has

cast a cloud on the rights of the plaintiff to get the decree in question. Therefore, the Civil Court had no jurisdiction in the facts and circumstances

of the case.

23. In view of the above discussion, the appeal filed by the appellant is liable to be allowed and the same is allowed. The decree passed by the

learned trial Court and affirmed by the learned First Appellate Court is accordingly set aside. The suit of the plaintiff shall be deemed to have been

dismissed. However, the parties are left to bear their own costs.