
(2015) 09 SHI CK 0075

High Court of Himachal Pradesh

Case No: Regular Second Appeal No. 62 of 2003

Chet Ram

APPELLANT

Vs

Brij Lal and Others

RESPONDENT

Date of Decision: Sept. 17, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), 100, 100(5)#Evidence Act, 1872 -
Section 107, 108

Citation: (2015) 09 SHI CK 0075

Hon'ble Judges: Piar Singh Rana, J

Bench: Single Bench

Advocate: Janesh Gupta, for the Appellant; Vivek Thakur, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Piar Singh Rana, J.

Order of limited remand

1. Present regular second appeal is filed under Section 100 of Code of Civil Procedure 1908 against judgment and decree passed by learned

District Judge Bilaspur (H.P.) on 27.12.2002 in Civil Appeal No. 95 of 1993 titled Achhru (deceased) through LRs Garja Ram and others v. Chet

Ram and others.

Brief facts of the case

2. Brief facts of the case as pleaded are that Chet Ram and others filed suit for declaration to the effect that plaintiffs are owners in possession of

179/1010 shares of the suit land measuring 50-10 bighas comprised in Khewat No. 36, Khatauni No. 39, Khasra Nos. 12, 14, 21, 25, 29, 30,

38, 39 situated in village Khalsayee Tehsil Ghumarwin District Bilaspur H.P. Plaintiffs have sought consequential relief of permanent prohibitory

injunction and plaintiffs have also sought alternative relief of possession. It is pleaded that whereabouts of Jaindu son of Khindoo who has 6/90

shares in suit property is not known for the last 27-28 years. It is pleaded that Jaindu son of Khindoo would be deemed to be civilly dead and his

6/90 shares would devolve upon the plaintiffs being his reversioners. It is pleaded that on 25.8.1988 defendant No. 1 threatened plaintiff No. 1

that he should not cut the grass from joint land and also not to enter the suit land. It is pleaded that plaintiffs are joint owners in possession to the

extent of 179/1010 shares of suit land measuring 50-10 bighas and defendant No. 1 is owner of 294/1010 share and defendants Nos. 2 to 5 are

owners of 179/1010 shares and defendant No. 6 is owner of 358/1010 shares. Decree of suit as mentioned in relief clause of plaint sought by

plaintiffs.

3. Per contra written statement filed on behalf of defendants pleaded therein that suit is not maintainable. It is pleaded that suit is time barred and

plaintiffs are estopped from filing the present suit because of their act and conduct. It is pleaded that plaintiffs did not raise any objection during

consolidation proceedings. It is pleaded that plaintiffs have taken active part in consolidation proceedings. It is pleaded that entries in revenue

record relating to possession of defendant No. 1 are correct. It is pleaded that parties are in settled possession of suit land as per entry in revenue

record. It is denied that Jaindu son of Khindoo had civilly died and it is also denied that 6/90 shares of Jaindu son of Khindoo devolves upon the

plaintiffs being reversioners. Prayer for dismissal of suit sought.

4. Plaintiffs also filed replication and re-asserted the allegations mentioned in the plaint. As per the pleadings of parties learned trial Court framed

following issues on 15.11.1999:--

1. Whether parties to the suit are joint owners in possession over the suit land as alleged? OPP

2. Whether one of the co-sharer Jaindu is not known for about 27/28 years as alleged, if so its effect? OPP

3. Whether defendants are interfering with the share of plaintiffs over the suit land as alleged?OPP

4. Whether suit is not maintainable as alleged?OPD

5. Whether suit is time barred as alleged? OPD

6. Whether plaintiffs are estopped to file the suit as alleged? OPD

7. Whether suit is not properly valued for the purpose of court fee and jurisdiction as alleged? OPD

8. Relief.

5. Learned trial Court decided issues Nos. 1 and 2 in affirmative and learned trial Court decided issues Nos. 3 to 7 in negative. Learned trial Court

held that Jaindu son of Khindoo is civilly dead and shares of plaintiffs have increased proportionately due to civil death of Jaindu son of Khindoo.

Learned trial Court further held that share of co-defendant No. 1 is reduced as mentioned in relief clause of judgment.

6. Feeling aggrieved against the judgment and decree passed by learned trial Court deceased Achhru co-defendant No. 1 filed civil appeal No. 95

of 1993 which was decided by learned District Judge Bilaspur on 27.12.2002. Learned first Appellate Court accepted the appeal. Learned first

Appellate Court held that plaintiffs are not legal heirs of deceased Jaindu son of Khindoo. Learned first Appellate Court further held that plaintiffs

are not entitled to succeed to the share of Jaindu son of Khindoo in suit land. Learned first Appellate Court further held that co-defendant No. 1

Shri Achhru is mortgagee in possession upon share of Jaindu in suit land w.e.f. 1959. Learned first Appellate Court set aside judgment and decree

of learned Trial Court.

7. Feeling aggrieved against the judgment and decree passed by learned first Appellate Court Chet Ram co-plaintiff filed RSA No. 62 of 2003

titled Chet Ram v. Brij Lal and others. RSA was admitted on following substantial questions of law on 26.3.2003:--

1. Whether lower Appellate Court was right in dismissing the suit of the plaintiffs on the ground that pleadings in the plaint were insufficient?

2. Whether first Appellate Court exceeded its jurisdiction in holding that co-defendant No. 1 was mortgagee in possession with respect to the

share of Jaindu in the absence of pleadings and issue, which materially effected the case?

8. Court is satisfied that additional substantial question of law is involved in present RSA No. 62 of 2003. Court is also satisfied that formulation of

additional substantial question of law is essential in present RSA No. 62 of 2003 in order to dispose of RSA properly and effectively and in order

to impart substantial justice to parties because 6/90 shares of Jaindoo son of Khindoo is in dispute inter se parties in present RSA. Hence following

additional substantial question of law is framed in present RSA No. 62 of 2003 by High Court exercising powers under Section 100(5) proviso:--

(3) Whether Jaindu son of Khindoo is necessary party in present civil suit of declaration and whether proper and effective decree cannot be

passed in absence of Jaindu son of Khindoo and whether Jaindu son of Khindoo ought to have been impleaded as co-defendant in civil suit titled

Chet Ram and others v. Achhru before learned Trial Court?

9. Court heard learned Advocate appearing on behalf of parties and also perused the entire record carefully.

10. Findings upon additional substantial question of law No. 3 framed by High Court with reasons:--

10.1 PW1 Chet Ram has stated that area of suit land is 50 bighas 10 biswas. He has stated that plaintiffs have 179/1010 shares. He has stated

that co-defendant No. 1 had alienated 11 bighas 13 biswas of land to Govind. He has stated that Jaindu was his real uncle. He has stated that

name of his father is Ram Dittu. He has stated that Ram Dittu and Jaindu are real brothers and further stated that Jaindu Ram and Ram Dittu are

sons of Khindu. He has stated that whereabouts of Jaindu son of Khindoo is not known since 31-32 years. He has stated that share of Jaindu son

of Khindoo has been illegally devolved upon co-defendant No. 1 in revenue entries for the year 1961-62. He has tendered in evidence document

Ext. PW1/A and he has also tendered jamabandi for the year 1986-87 Ext. PW1/B in evidence. He has stated that suit be decreed as prayed in

relief clause of plaint. In cross examination he has denied suggestion that Jaindu was not son of Khindu. He has denied suggestion that plaintiffs are

not legally entitled to the share of Jaindu. He has denied suggestion that Jaindu and Ram Dittu used to reside separately. He has stated that no

family partition took place inter se the parties. He has stated that he did not file any application before Patwari, Field Kanungo or Tehsildar for

correction of revenue entries. He has denied suggestion that Jaindu had alienated his share to co-defendant Achhru. He has denied suggestion that

Achhru is in settled possession qua the share of Jaindu.

10.2 PW1-A Sunka Ram has stated that parties are known to him and he has further stated that parties are residents of his village. He has stated

that he is Numberdar of the area. He has stated that suit land is also situated in his village. He has stated that Jaindu and Ram Dittu were sons of

Khindu. He has stated that Chet Ram is son of Ram Dittu. He has stated that Jaindu is real uncle of Chet Ram. He has stated that whereabouts of

Jaindu is not known since 31-32 years. He has stated that plaintiffs are legally entitled for the share of Jaindu son of Khindoo. He has stated that

suit land is joint inter se the parties. He has stated that co-defendant No. 1 has alienated about 16-17 bighas of land to his relative Govind. He has

stated that Khindu was known to him. He has stated that Jaindu had mortgaged his share in suit land with him in consideration amount of Rs. 100/-

. He has stated that Jaindu took Rs. 100/- from co-defendant Achhru and thereafter Jaindu paid mortgaged amount to him and thereafter he

vacated possession of mortgaged land. He has stated that document Ext. DA was executed. He has stated that when he left possession of the suit

land thereafter Achhru came in possession of suit land qua share of Jaindu.

10.3 PW2 Sant Ram has stated that parties are known to him and he has seen the suit land. He has stated that Jaindu and Ram Dittu were real

brothers. He has stated that where about of Jaindu is not known since 28-29 years. He has stated that he does not know whether Jaindu has died.

He has stated that he did not see Jaindu since 28-29 years. He has stated that Achhroo had alienated some portion of land to his relative. He has

stated that suit land is in joint possession of parties. He has stated that Chet Ram and Achhru used to reside separately and both are cultivating the

suit land separately. He has stated that in revenue papers suit land is joint inter se the parties and parties have divided the suit land by way of family

partition. He has stated that he does not know that plaintiffs have filed application before revenue Court relating to wrong entries in the revenue

papers.

10.4 DW1 Achhru Ram has stated that parties are in settled possession of suit land as per revenue record. He has stated that in revenue record

the suit land has been shown as joint inter se the parties. He has stated that even in consolidation proceedings no objection was raised by Chet

Ram. He has stated that Jaindu Ram was son of Khindu and Jaindu and Ram Dittu used to reside separately. He has stated that Jaindu Ram and

Ram Dittu were born from loins of one father but their mothers were different. He has stated that he is in possession of share of Jaindu. He has

stated that share of Jaindu was mortgaged since 35-36 years ago with him. He has stated that whereabouts of Jaindu is not known since 30 years

and further stated that Jaindu did not come to village since 10-12 years. He has denied suggestion that document Ext. DA is forged document. He

has stated that Jaindu was unmarried. He has stated that he does not know whether Jaindu had married outside. He has admitted that Jaindu is real

uncle of plaintiffs. He has denied suggestion that he did not see Jaindu since 35-36 years. He has stated that he could not state whether Jaindu had

died. He has stated that according to his information Jaindu is still alive. He has stated that he is legal heir of Jaindu Ram. He has denied suggestion

that he is in possession of share of Jaindu in illegal manner. He has denied suggestion that whereabouts of Jaindu is not known since 35-36 years.

He has denied suggestion that he had got recorded the entries in revenue record qua share of Jaindu in collusion with revenue department.

11. In para 7 of the plaint plaintiffs have specifically pleaded that whereabouts of Jaindu Ram son of Khindoo is not known for the last 27-28 years

to the plaintiffs and other relatives and he would be deemed to be civilly dead and his share to the extent of 6/90 shares would devolve upon

plaintiffs as plaintiffs are reversioners of Jaindu in relation. Plaintiffs have sought the declaration that Jaindu would be deemed to be civilly dead as

per Section 107 and 108 of Indian Evidence Act 1872. In para 7 of written statement co-defendant Achhru has specifically denied that Jaindu

Ram would be presumed to be civilly dead. Court has also perused jamabandi for the year 1986-87 Ext. PW1/B placed on record. As per

jamabandi for the year 1986-87 Ext. PW1/B placed on record in the ownership column it is specifically recorded that Jaindu son of Khindoo is

owner of 6/90 shares and in possession column of jamabandi for the year 1986-87 it is specifically recorded in positive manner that Achhru co-

defendant No. 1 is non-occupancy tenant under Jaindu qua 6/90 shares. Column of rent is blank in jamabandi for the year 1986-87 relating to

6/90 shares of Jaindu son of Khindoo. Achhru has appeared in witness box as DW1. Achhru has specifically stated that Jaindu had mortgaged the

suit land qua his share i.e. 6/90 shares with Achhru in the year 1959. It is held that person is presumed to be civilly dead if not heard for more than

seven years. It is also well settled law that person is presumed to be civilly dead when decree is passed by competent Court of law. It is held that

prior to passing of decree relating to civilly death of a person at the time of institution of civil suit a person against whom decree of declaration of

civilly dead is sought is necessary party. It is proved on record that plaintiffs did not implead Jaindu son of Khindoo as co-defendant in present

case when plaintiffs instituted the present civil suit. It is also well settled law that no decree of declaration should be granted by civil Court unless

opportunity of hearing is not given to the affected person. Learned trial Court in para 7 at page 6 of judgment has held that Jaindu son of Khindoo

should be impleaded as party in instant suit because the decision of suit would definitely effect 6/90 shares of Jaindu son of Khindoo. Learned trial

Court held that by not making Jaindu Ram son of Khindoo as party in present suit Jaindu Ram son of Khindoo has been deprived of the notice

which was required to be served on him to appear in Court either personally or through Advocate. In present case plaintiffs have sought relief of

declaration to the effect that they are entitled 6/90 shares of Jaindu Ram in suit land on the basis of reversionary rights. Suits for declaratory

decrees are governed by Chapter 6 of Specific Relief Act 1963. Declaratory suits are filed when parties claim any legal character or status in any

property. It is held that question of necessary party should be decided with reference to averment in plaint and matter in controversy. It is further

held that necessary party must have direct interest in the disputed property. It is held that in present case Jaindu son of Khindoo has direct interest

in the property because plaintiffs have claimed legal status qua his 6/90 shares in the suit property as reversionary. It is further held that

impleadment of Jaindu son of Khindoo as co-defendant is necessary in present case for determination of real matter in dispute and to impart

substantial justice inter se the parties and to pass effective decree in present case. (See Razia Begum Vs. Sahebzadi Anwar Begum and Others,

AIR 1958 SC 886 : (1959) 1 SCR 1111 . See AIR 1995 Allahabad 07 titled Committee of Management, Ratan Muni Jain Inter College and

another v. III Additional Civil Judge, Agra and others) It is held that impleadment of Jaindu as co-defendant in present case is essential as per

Order 1 Rule 10(2) of Code of Civil Procedure 1908. It is held that impleadment of Jaindu Ram is necessary in present case in order to effectually

and completely adjudicate and settle all questions involved in suit because plaintiffs had sought declaration of title qua 6/90 shares of Jaindu son of

Khindoo in suit land as reversioners. It was held in case reported in Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd.

and Others, AIR 2012 SC 2925 : (2012) 4 CompLJ 433 : (2012) 7 JT 531 : (2012) 4 RCR(Civil) 308 : (2012) 7 SCALE 448 : (2012) 8 SCC

384 : (2012) AIRSCW 4677 : (2012) 5 Supreme 557 that Court can at any stage of proceedings either on application made by parties or

otherwise direct impleadment of any person as party who ought to have been joined as plaintiff or defendant or whose presence before the Court

is necessary for effective and complete adjudication of issue involved in the suit. It is further held that a necessary party is the person who ought to

be joined as party to the suit and in whose absence an effective decree cannot be passed by Court. (See Mumbai International Airport Pvt. Ltd.

Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, AIR 2010 SC 3109 : (2010) 6 JT 537 : (2010) 7 SCC 417 : (2010) 7 UJ

3266 . See Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, AIR 2005 SC 2209 : (2005) 4 CTC 47 : (2005) 5 JT 20 : (2005)

141 PLR 201 : (2005) 11 SCC 403 : (2005) 3 SCR 509 . See Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, AIR 2004 SC 173 :

(2003) 8 JT 478 : (2003) 9 SCALE 393 : (2004) 1 SCC 191 : (2003) 5 SCR 290 Supp . See Dhurandhar Prasad Singh Vs. Jai Prakash

University and Others, AIR 2001 SC 2552 : (2001) 5 JT 578 : (2001) 4 SCALE 495 : (2001) 6 SCC 534 : (2001) 3 SCR 1129 : (2001) 3 SLJ

432 : (2001) AIRSCW 2674 : (2001) 5 Supreme 278 . See Savitri Devi Vs. District Judge, Gorakhpur and Others, AIR 1999 SC 976 : (1999)

1 JT 643 : (1999) 1 SCALE 516 : (1999) 2 SCC 577 : (1999) 1 SCR 725 : (1999)
AIRSCW 597 : (1999) 2 Supreme 172 . See Khemchand

Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, AIR 1983 SC 124 :
(1982) 2 SCALE 1120 : (1983) 1 SCC 18 : (1983) 1

SCR 898 : (1983) 15 UJ 20 . See Jayaram Mudaliar Vs. Ayyaswami and Others, AIR
1973 SC 569 : (1972) 2 SCC 200 : (1973) 1 SCR 139 .

See Rajender Singh and Others Vs. Santa Singh and Others, AIR 1973 SC 2537 : (1973)
2 SCC 705 : (1974) 1 SCR 381 . See Nagubai

Ammal and Others Vs. B. Shama Rao and Others, AIR 1956 SC 593 : (1956) 1 SCR 451
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12. Findings are not given on other substantial questions of law framed by High Court on
merits because same would materially and adversely

effect the rights of contesting parties.

13. It is held that Court is under legal obligation to implead a necessary person as a
co-party even if objection is not raised by contesting party

when Court comes to conclusion that presence of parties before the Court is necessary in
order to enable the Court effectually and completely

adjudicate upon and to settle all questions involved in the suit. In present case it is held
that impleadment of Jaindu son of Khindoo as co-defendant

is necessary in the ends of justice in order to enable the Court effectually and completely
adjudicate upon and to settle all questions involved in the

suit and to pass effective decree.

14. In view of above stated facts and case law cited supra judgment and decree passed
by learned trial Court in case No. 90-1 of 1992/88

decided on 30.8.1993 titled Chet Ram and others v. Acchru and others and judgment and
decree passed by learned first Appellate Court in Civil

Appeal No. 95 of 1993 titled Acchru (deceased) through LRs Garja Ram and others v.
Chet Ram decided on 27.12.2002 are set aside and case

is remanded back to learned trial Court for limited purpose only with direction to implead
Jaindu son of Khindoo who has 6/90 shares in suit

property as co-defendant. Learned trial Court will issue notice to co-defendant Jaindu son of Khindoo strictly in accordance with law and

publication for service of co-defendant Jaindu son of Khindoo will also be effected on the newspaper in accordance with law and thereafter

learned trial Court will dispose of suit in accordance with law. Evidence already recorded will form part and parcel qua contesting parties as of

today. Parties are directed to appear before learned trial Court on 16.10.2015. Files of learned trial Court and learned first Appellate Court be

sent back forthwith along with certified copy of this order. Parties are left to bear their own costs. RSA No. 62 of 2003 is disposed of. All pending

miscellaneous application(s) if any also stands disposed of.