

(2016) 06 SHI CK 0099
High Court of Himachal Pradesh
Case No: RSA No. 102 of 2004.

Niru Ram - Appellant @HASH
State of Himachal Pradesh and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: June 17, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Specific Relief Act, 1963 - Section 34

Citation: (2016) ILRHP 1963

Hon'ble Judges: Sureshwar Thakur, J.

Bench: Single Bench

Advocate: Mr. Anand Sharma, Advocate, for the Appellant; Mr. Vivek Singh Attri, Deputy Advocate General, for the Respondent Nos. 1 to 3

Final Decision: Disposed Off

Judgement

Mr. Sureshwar Thakur, J.(Oral) - The instant Regular Second Appeal stands directed against the impugned judgment and decree rendered by the learned District Judge, Chamba Division Chamba, H.P., in Civil Appeal No. 21 of 2003 of 4.12.2003 whereby it affirmed the judgment and decree of 15.11.2002 rendered in Civil Suit No. 126/98-70/2001 by the learned Sub Judge, Ist Class, Dalhousie, District Chamba H.P.

2. The predecessor-in-interest of the appellant herein (for short "the plaintiff") instituted a suit for declaration and permanent prohibitory injunction in the Court of Sub Judge Ist Class, Dalhousie, District Chamba, H.P qua the suit land comprised in Khasra Nos. 7, 8 and 15 kitta 3 Khatouni No. 4/6 min, situated in Mohal reserve jungle Badei, H.B No. 202 Pargana Chowari, Tehsil Bhatiiyat, District Chamba, H.P (for short the "suit land"). The plaintiff pleaded that she had been enjoying her right in the suit land prior to regular settlement without any interruption and therefore

had become owner by way of adverse possession. The State of H.P. contested the suit and filed written-statement. In its written-statement it has taken preliminary objections inter alia maintainability, time barred, non-joinder of necessary parties, locus standi, valuation, jurisdiction and no legal notice being served upon them etc. It is also contended that State is the absolute owner in possession of the suit land. The plaintiffs filed a replication to the written-statement filed by the defendants and reasserted the stand taken in the plaint. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties at contest:-

"1. Whether the plaintiff has become owner of the suit land by way of adverse possession as alleged ?OPP

2. Whether the plaintiff is entitled to a decree for permanent prohibitory injunction as prayed for? OPP

3. Whether the plaintiff has no locus-standi to file the present suit? OPD

4. Whether the suit is not maintainable in the present form? OPD

5. Whether no legal notice has been served upon the defendants No. 1 to 3, if so, its effect? OPD.

6. Whether the suit is bad for non-joinder of necessary parties? OPD

7. Whether the suit is time barred? OPD

8. Whether this Court has no jurisdiction to try the suit? OPD

9. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD

10. Relief."

3. The relief aforesaid stands prayed for before the learned trial Court by the plaintiff against the State of Himachal Pradesh which stands recorded in the apposite revenue record to be holding title qua it. The relief as prayed for by the plaintiff in his suit stood declined to him by the learned trial Court. In an appeal preferred therefrom by the plaintiff before the learned District Judge, Chamba, the latter Court concurred with the findings recorded by the learned trial Court hence proceeded to dismiss the appeal preferred there before by the plaintiff. The plaintiff has instituted the instant appeal before this Court assailing the findings recorded by the learned District Judge in his impugned rendition. She however died during its pendency and under the rendition of this Court of 27.8.2013 she came to be substituted by her LRs (appellant herein)

4. Since the appeal stood admitted by this Court on the following substantial question of law, consequently this Court would decide the instant appeal by merely rendering answers thereto.

"(a) Whether the learned Courts below have mis-interpreted the documents Ex. P-1, P-2, P-3, P-4, P-5, P-6 which are the Jamabandies with effect from 1956-57 to 1986-87 and Jamabandies PX and PY for the years 1991-92, 1995-96 vide which the possession of the plaintiff has been mentioned as "Kabza Najaez" and also the oral evidence?"

Substantial question of law:-

5. Vivid pronouncements occur in the Jamabandi qua the suit land comprised in Ex.P-1 and P-2 of the predecessor-in-interest of the plaintiff besides of the plaintiff extantly standing recorded therein to be holding possession of the suit land. However the plaintiff during her life time held unauthorized possession of the suit land and on her demise her LRs who are the appellant herein also hold unauthorized possession thereof. The learned counsel for the appellant with vigour contends before this Court qua the depictions aforesaid in the apposite revenue records of the appellant herein continuously since 1956 through their respective predecessors-in-interest up to now holding unauthorized possession/occupation of Government land is perse magnificatory of theirs holding possession thereof with a hostile animus besides with an animus possidendi, possession whereof incessantly continuing since then up to now stands ripened by prescription into "absolute ownership". However the aforesaid address made before this Court by the learned counsel for the appellant is legally unsound besides is bereft of any tenacity rather stands discountenanced by this Court in its rendition reported in 2016(1) Him L.R. 134, the relevant paragraph 12,13 and 14 whereof stand extracted hereinafter, wherein this Court has with formidability rendered a pronouncement of the plea of adverse possession not being open for its standing either reared or canvassed by the plaintiff, contrarily it being available for its being resorted to as a shield by the defendant alone.

"12. The learned District Judge, Kangra returned findings to the effect that the possession of the plaintiffs was never interrupted despite the compromise decree before the Additional District Judge, Dharamshala. According to him, due to long, continuous and recorded possession of more than 12 years, the plaintiffs have acquired title to the suit property by way of adverse possession. The plaintiffs have filed suit for declaration of ownership and also in the alternative for possession based on adverse possession.

13. Their lordships of the Hon"ble Supreme Court in the case of **Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, reported in (2014) 1 SCC 669** have held that even if the plaintiff was found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Their lordships have held as follows:-

"8. There cannot be any quarrel to this extent the judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse

possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can see this adverse possession as a shield/defence."

14. Accordingly, in view of the definitive law laid down by the Hon"ble Supreme Court in the judgment cited herein above, it is held that the declarative suit filed at the instance of the plaintiffs was not maintainable on the basis of adverse possession. The learned first appellate Court has erred in law by reversing the findings rendered by the learned sub Judge 1st Class (1) Dehra dated 23.4.2002 by declaring the plaintiffs to be owners-in-possession of the suit land by way of adverse possession."

6. While revering the aforesaid mandate of law encapsulated in the aforesaid verdict of this Court, the nursing of the plea of adverse possession by the plaintiff against the defendant whereupon she canvasses of given the aforesaid portrayals qua the suit land in the aforereferred jamabandis of hers with an animus possidendi holding uninterrupted possession of the suit land during her life time and on her demise possession thereof standing likewise held by the appellant herein rendering it to ripen by prescription ensuing from the statutorily prescribed period of limitation elapsing since then uptill now "into absolute title" being neither available to her for espousal in the plaint nor hence evidence if any in consonance therewith as occurs on record is readable rather is oustable.

7. In view of the above, there is no merit in the appeal, the same is accordingly dismissed. Impugned judgments and decrees stand maintained and affirmed. Substantial question of law is answered accordingly. However, the defendants shall not evict the appellant herein from his possession over the suit land unless they initiate appropriate proceedings in accordance with law against the appellant herein. All pending applications stand disposed of accordingly. Records be sent back.