

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 208 of 2004

Reserved on: 12.3.2026

Date of Decision: 22.04.2026

Bhim Chand

...Appellant

Versus

Hans Raj (deceased) through LRs

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : Mr Bhupender Gupta, Senior Advocate, with Mr Pranjal Munjal, Advocate.

For the Respondents : Mr N.K. Sood, Senior Advocate, with Mr Aman Sood, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 20.09.2003 passed by learned Additional District Judge (1), Kangra, at Dharamshala, District Kangra, H.P. (learned Appellate Court) vide which the judgment and decree dated 28.6.2000, passed by learned Sub Judge First Class, Baijnath, District Kangra, H.P. (learned Trial Court) were upheld

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit for seeking a declaration that parties are co-tenants in joint possession of the land comprised in Khata No.145, Khatauni No. 399, Khasra No. 402, 403, 452 Kita-3, measuring 0-36-64 hectares as recorded in the copy of Jamabandi for the year 1993-94, situated in Mohal Pantehar, Mauza Dhanag, Tehsil Baijnath, District Kangra, H.P. (hereinafter referred to as the suit land) and order of learned Assistant Collector 1st Grade-cum-Tehsildar, Baijnath, District Kangra, H.P., dated 23.11.1995 is illegal, null and void. A consequential relief of permanent prohibitory injunction for restraining the defendant from ousting the plaintiff or cutting any trees was also sought.

3. It was asserted that the plaintiff and defendant are co-tenants in joint possession of the suit land. The defendant filed an application for correction before Tehsildar, who wrongly allowed it and deleted the long-standing entry in the name of the plaintiff's father and ordered the name of defendant

to be recorded as exclusive tenant of the suit land. The defendant threatened to interfere with the possession of the plaintiff and asked him to vacate the suit land on 25.06.1996. The defendant also cut the trees from the suit land. The plaintiff requested the defendant not to interfere with the suit land, but in vain; hence, the suit was filed to seek the relief mentioned above.

4. The suit was opposed by filing a written statement taking preliminary objections regarding the lack of locus standi and maintainability, the suit being bad for non-joinder and mis-joinder of a necessary party and the plaintiff being estopped from filing the present suit by his act and conduct. The contents of the plaint were denied on the merits. It was asserted that learned Assistant Collector 1st Grade-cum-Tehsildar, Baijnath, verified the actual position on the spot before passing the order. The plaintiff or his predecessor-in-interest neither cultivated the suit land nor remained in its possession. The plaintiff has nothing to do with the suit land, and the claim made by him that the defendant interfered with his possession is incorrect. Hence, it was prayed that the present suit be dismissed.

5. A replication denying the contents of the written statement and affirming those of the plaintiff was filed.

6. The following issues were framed by the learned Trial Court on 27.11.1996:

1. Whether the plaintiff is entitled for the decree of declaration as alleged? OPP.
2. Whether the order dated 23.11.1995 is illegal, null and void and is liable to be set aside as alleged? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff has no *locus standi* to file the present suit? OPD.
5. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.
6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD.
7. Relief.

7. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW1) and Sumit Sood (PW2). The defendant Bhim Chand examined himself (DW1) and Raj Gopal (DW2).

8. Learned Trial Court held that the predecessor-in-interest of the parties was recorded to be the joint tenants. Learned Assistant Collector 1st Grade ordered the correction on the basis that the plaintiff had entered his name in the column of possession regarding 9½ kanals of land by deleting the

defendant's name. However, this fact was not pleaded by the defendant and was also not stated by any of the witnesses. The possession of a co-tenant is not only for himself, but for the other co-tenants as well. The defendant did not plead the ouster, and the order passed by the learned Assistant Collector, 1st Grade, was not sustainable; hence, the learned Trial Court answered Issues No. 1 and 2 in the affirmative, Issues No. 3 to 6 in the negative and decreed the suit of the plaintiff.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal which was decided by the learned Additional District Judge (1), Kangra at Dharamshala, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the defendant had failed to prove the plaintiff's ouster. The predecessors in interest of the parties were recorded as the co-tenants, and the possession of the tenant was not only on his own behalf, but on behalf of other co-tenants as well. There was no infirmity in the judgment and decree passed by the learned Trial Court; hence, the appeal was dismissed.

10. Being aggrieved by the judgments and decrees passed by learned Courts below, the defendant filed the present appeal, which was admitted on the following substantial questions of law on 29.07.2004: -

1. Whether both the Courts below have gone beyond their jurisdiction to entertain the suit of declaration filed by the plaintiff-respondent seeking to declare his status as tenant without impleading the owners of the land as party to the suit, when such owners were party to the proceedings before the Land Reforms Officer (Assistant Collector 1st Grade) who passed order of correction of entries (Ext. P-2) was not the suit liable to be dismissed on account of non-joinder of necessary parties?
2. Whether both the Courts below have acted in an erroneous and perverse manner in entertaining the suit, which was beyond the competence of the Civil Court, by ignoring the principles of law enunciated in the Full Bench judgment of this Hon'ble Court titled Chunia Devi Vs. Jindu Ram were not the pleadings of the plaintiff-respondent insufficient to invest both the Courts below with the jurisdiction when a competent authority under a special statute, after due enquiry, passed an order which was sought to be assailed in such a civil suit?

11. When the matter was listed for hearing on 05.05.2022, the coordinate bench of this Court requisitioned the record in Case No. 68 of 1986 decided on 17.11.1986 by learned Assistant Collector, 2nd Grade, Baijnath, Case No. 44 of 1986 decided on 18.06.1992 by learned Assistant Collector, Baijnath

and Case No. 80 of 1986 decided on 17.11.1986 by learned assistant Collector 2nd Grade, Baijnath. This order was not assailed by any of the parties, and the record is before this Court.

12. I have heard Mr Bhupender Gupta, learned Senior counsel, assisted by Mr Pranjal Munjal, learned counsel for the appellant and Mr N.K. Sood, learned Senior Counsel, assisted by Mr Aman Sood, learned Counsel for the respondent.

13. Mr Bhupender Gupta, learned Senior Counsel for the appellant, submitted that the learned Courts below erred in decreeing the suit. The proceedings were held before the learned Assistant Collector, 1st Grade, while exercising jurisdiction as Land Reforms Officer. The order was passed by a Special Court, and the jurisdiction of the Civil Court to go into the validity of the order was barred. Learned Assistant Collector 1st Grade had rightly held that the defendant had got his exclusive possession recorded in different proceedings, which showed that the parties were cultivating the land exclusively. There was no jurisdictional error in the order passed by Learned Assistant Collector 1st Grade, and the learned Courts below erred in interfering with the order passed by the Land Reforms Officer. Hence, he prayed

that the present appeal be allowed and the judgments and decrees passed by the Lord. Courts below be set aside.

14. Mr N.K. Sood, learned Senior Counsel for the respondents, submitted that the learned Courts below had rightly held that the predecessor-in-interest of the parties was recorded as a tenant and there was no evidence of the surrender of the tenancy or ouster of the co-tenant. Even if one co-tenant is in possession, his possession is not only on behalf of himself, but on behalf of the other co-tenants as well. There is no infirmity in the findings recorded by learned Courts below, and this Court should not interfere with the concurrent findings of facts recorded by learned Courts below. Hence, he prayed that the present appeal be dismissed.

15. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

16. The record requisitioned by this Court shows that two applications were filed before the learned Assistant Collector 2nd Grade, Baijnath and these were dismissed by him

on 17.11.1986. The matter was carried in an appeal, and learned Collector Baijnath set aside the order on 05.08.1991 after holding that the applications were filed before learned Assistant Collector 2nd Grade, who was not a Land Reforms Officer and that only the Land Reforms Officer was competent to adjudicate the applications. Hence, the matter was remitted to the learned Land Reforms Officer to decide the application as per the law. Learned Land Reforms Officer passed an order on 18.06.1992 directing that the name of Kharku be deleted and be substituted by the name of Hans Raj regarding Khasra No. 1161. This corroborated the conclusion drawn by the Land Reforms Officer that Hans Raj had got the name of the plaintiff deleted regarding 9½ kanals of land. The learned Land Reforms Officer-cum-Assistant Collector 1st Grade also held that the verification carried out on the spot also showed the possession of Bhim Chand on Khata No. 135 (min), Khatauni No.403, measuring 0–36–64 hectares. Therefore, his name should be exclusively recorded in the revenue record.

17. Learned Courts below did not have the advantage of the record requisitioned by this Court and were persuaded to

hold that there was nothing to support the conclusion that the name of Bhim Chand was deleted from 9/1/2 kanals of land.

18. The order passed by the Land Reforms Officer shows that Gian Chand, Pratap Chand, and Kishan Dass were arrayed as parties before the Land Reforms Officer. They were recorded to be the owners of the suit land in the copy of *Bandobast Jadeed* (Ex.P3). They had supported the claim made by Bhim Chand and had not challenged the order passed by the Land Reforms Officer. Only a landowner could have been aggrieved by the finding recorded by the Land Reforms Officer regarding the tenancy over the land owned by him. The landowner had not assailed the order passed by the learned Land Reforms Officer and attained finality qua them. Therefore, it was not permissible for the plaintiff to challenge the order without impleading the owners and allowing them to put forth their version.

19. Learned Trial Court held that no relief was sought against the owners, and they were not necessary parties. The Learned Appellate Court also held that no evidence on record was produced to show how the suit was bad for non-joinder of necessary parties. These findings cannot be sustained. The land

owners are the best persons to decide who would be the tenants under them, and any declaration regarding the tenancy would have affected the rights to obtain the rent from the tenants; hence, no declaration adversely affecting their rights could have been granted in their absence; hence, the substantial question of law is answered accordingly.

Substantial Question of Law No.2:

20. The order was passed by the Land Reforms Officer under the provisions of the H.P. Tenancy and Land Reforms Act, which provides a complete machinery for challenging the orders and excludes the jurisdiction of the civil courts. It was laid down by this Court in *Chuhniya Devi versus Jindu Ram, 1991 (1) Shim. L.C. 223* that where an order has been passed by a Land Reforms Officer, the jurisdiction of the Civil Court to go into the question is barred unless the authority has violated the fundamental principle of judicial procedure or the statute. In the present case, the Land Reforms Officer had allowed the plaintiff and the landowner to present their case, and no infraction of fundamental procedure of law was shown; hence, the suit could not have been filed before the Civil Courts. The learned Courts

below did not advert to this aspect; hence, this substantial question of law is answered accordingly.

Final order:

21. In view of the above, the present appeal is allowed, and judgments and decrees passed by learned Courts below are ordered to be set aside, and the suit of the plaintiff is ordered to be dismissed as not maintainable before the civil court.

22. Pending application(s), if any, also stand(s) disposed of.

23. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

22nd April, 2026
(Nikita)