

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**RSA No. 199 of 2008****Reserved on: 22.4.2026****Date of Decision: 15.6.2026**

Bimla Devi**...Appellant****Versus****Sardool Singh & ors.****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Appellant** : Mr Naveen K. Bhardwaj,
Advocate.**For Respondents No.1 &2** : Mr Bimal Gupta, Senior
Advocate, with Mr Trigun Singh
Negi, Advocate.**For Respondents No.8(a) to 8(c) and 9 to 12.** : Proceeded against ex-parte vide
order dated 27.7.2021.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 17.1.2008 passed by the learned Additional District Judge, Fast Track Court, Kullu, H.P. (learned Appellate Court), vide which the judgment and decree dated 7.7.2007,

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

passed by the learned Civil Judge, Senior Division, Lahaul Spiti & Kullu, H.P. (learned Trial Court) were upheld. *(The 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 before the learned Trial Court for seeking a declaration that he is the owner in possession of the suit land described in para-1 of the plaint, mutation No. 2327, dated 23.9.1997 and mutation No. 2384, decided on 21.11.1998, sale deed dated 25.11.1998 and mutation No. 2403, decided on 17.2.1999 are illegal and void which are not binding upon the plaintiff. A consequential relief of Permanent Prohibitory Injunction for restraining the defendants from interfering in the ownership and possession of the plaintiff was also prayed. An alternative relief of possession was sought in case the defendants succeed in forcibly dispossessing the plaintiff from the suit land. It was asserted that the suit land is situated in Bhunter Bazar within the limits of the Notified Area Committee, Bhunter. The plaintiff obtained the suit land in exchange from one Ram Singh in the year 1969. Mutation No. 878 was attested on 9.4.1969. A single-storied slate-roofed mud

structure measuring 9x9 haath existed on the suit land, which was rented out to one Shanu Ram, a cobbler by occupation, for a yearly rent of ₹5/-. He surrendered his tenancy much before 1959-60, and the structure remained vacant. The structure collapsed, and the debris remained on the surface. Ram Singh delivered the possession of the suit land to the plaintiff, and the plaintiff continued to be in possession as an owner. Shanu Ram died in the year 1990. Defendant Nos. 1 to 3 got a mutation No. 2327 entered in their favour behind the plaintiff's back. This mutation is wrong, illegal and not binding upon the plaintiff's rights. Defendant No.4 filed a suit against the plaintiff and his son, contending that she had purchased the suit land vide Sale Deed dated 19.7.1997 for a consideration of ₹1,30,000/-. The mutation was sanctioned in favour of defendants No.1 to 3 on 21.11.1998 without hearing the plaintiff. Defendants Nos. 1 to 3 executed a fictitious sale deed in favour of defendant No.4. The defendants are threatening to dispossess the plaintiff; hence the suit was filed to seek the relief mentioned above.

3. The suit was opposed by defendants No. 1 to 3 by filing a written statement taking preliminary objections regarding the lack of maintainability and jurisdiction, the suit

being barred by limitation, the suit having not been properly valued for Court fees and jurisdiction, the plaintiff having not come to the Court with clean hands, and the plaintiffs being estopped by their act and conduct from filing the present suit. The contents of the plaint were denied on the merits. It was asserted that Ram Singh was not in possession of the suit land, and he was not competent to hand over the possession to the plaintiff. The mutation was rightly sanctioned in favour of defendants No.1 to 3, and the plaintiff has no right to challenge the mutation. It was claimed that the suit land was earlier an agricultural land which was being cultivated and possessed by one Abdul Gir, son of Munshi. He had inducted Shanu Ram as a tenant on payment of yearly rent of ₹5/-. Shanu Ram also constructed a one-and-a-half-storied structure on a portion of the suit land with the consent of Abdul Gir, and started running the business of a cobbler. Abdul Gir left India and settled in Pakistan. Ram Chand obtained the suit land from the Government, but the suit land continued to be in possession of Shanu Ram. Shanu Ram was an occupancy tenant of the suit land, and he became the owner under the provisions of the Punjab Security of Land Tenures Act, 1953. The structure

constructed by Shanu Ram collapsed in the year 1970, and the land again became agricultural land. Shanu Ram started cultivating the suit land. The mutation was rightly sanctioned in favour of defendants No.1 to 3. The plaintiff had filed an appeal against the sanction of the mutation, which was dismissed. The plaintiff filed a civil suit, which was dismissed as withdrawn. He again filed a civil suit claiming the resumption of the land, which was dismissed. The suit is barred by the principle of *res judicata*. Hence, it was prayed that the suit be dismissed.

4. Defendant No.4 also filed a written statement taking a preliminary objection regarding the lack of maintainability and cause of action, and the suit being barred by limitation. The contents of the plaint were denied on the merits. It was asserted that defendant No.4 had filed a civil suit against the plaintiff and her son, which was still pending. The sale deed was valid, and the mutation was properly sanctioned. The plaintiff suppressed the material fact from the Court. The Civil Court had no jurisdiction to go into the question of the conferment of proprietary rights. Therefore, it was prayed that the suit be dismissed.

5. Learned Trial Court framed the following issues on

3.3.2000: –

1. Whether the plaintiff is owner-in-possession of the suit land, as alleged? OPP.
2. Whether the plaintiff is entitled to the relief of an injunction as prayed? OPP.
3. Whether the Mutation No.2327, dated 23.9.1997, is illegal, void and inoperative? OPP.
4. Whether the sale deed dated 25.11.1993 executed by the defendants No.1 to 3 in favour of defendant No.4 is illegal, void and inoperative? OPP.
5. Whether this suit is not maintainable in the present form? OPD.
6. Whether the plaintiff has no cause of action? OPD.
7. Whether the suit is within limitation? OPP.
8. Whether the suit has not been properly valued for the purpose of the court fee and jurisdiction? OPD.
9. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.
10. Whether the suit is barred by the principle of *res judicata*? OPD.
11. Whether this court has no jurisdiction to try the present suit? OPD.
12. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined Sardool Singh (PW1). The defendants examined defendant number four (DW1), Rajinder Pal (DW2), Bhuvneshwar Dutt (DW3), Bihari Lal (DW4), Gagan Singh Negi (DW5), Briku Ram (DW6) and Nanak Chand (DW7).

7. The learned Trial Court held that the evidence on record was insufficient to infer the terms and conditions of Shanu Ram's tenancy. The suit land was recorded to be *Gair Mumkin Abadi* in the revenue record. There was no satisfactory evidence that Shanu Ram was cultivating the land before the construction was raised or after the year 1970, when the structure collapsed. The record showed that Shanu Ram was merely inducted as a tenant of the structure and not of the land. The land was not subservient to agriculture, and it would not fall within the definition of agricultural land. No proprietary rights could have been conferred on it. An oral exchange was permissible in the year 1969, and the plaintiff became the owner after the exchange. The suit was not barred by Order II Rule 2 or the doctrine of *res judicata*. Hence, the learned Trial Court answered issues No.1, 3, 4 and 7 in the affirmative, the rest of the issues in the negative and decreed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, defendant No.4 filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Kullu, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court

that the land was a built-up structure located within the *abadi deh* and could not have been the subject matter of the tenancy under the H.P. Tenancy and Land Reforms Act. Oral exchange was permissible in Kullu in the year 1969. The suit was not barred by the principle of *res judicata* and Order II Rule 2. There was no infirmity in the judgments and decrees passed by the learned Trial Court. Therefore, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned Courts below, defendant No.4 Bimla Devi has filed the present appeal, which was admitted on the following substantial questions of law on 19.11.2008:-

1. Whether the suit of the plaintiffs is barred by the principles of *res judicata* in view of the earlier suit No. 188/86 filed by Shri Sheetal Singh, predecessor in interest of the plaintiffs?
2. Whether the plaintiffs are estopped to file the present suit in view of the admission made by their predecessor, Sheetal Singh, admitting that Shri Shaunu was a tenant before the Land Reform Officer?
3. Whether both the Courts below have misread the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, which has materially prejudiced the case of the appellant?

10. I have heard Mr Naveen K. Bhardwaj, learned counsel for the appellant and Mr Bimal Gupta, learned Senior Advocate,

assisted by Mr Trigun Singh Negi, learned counsel for respondents No.1 and 2.

11. Mr Naveen K. Bhardwaj, learned counsel for the appellant, submitted that the learned Courts below erred in holding that the oral exchange was permissible. The exchange is similar to a sale and could not have been effected without a registered Exchange Deed. No registered Exchange Deed was produced on record, and the plaintiff had no *locus standi* to file the present suit. The plaintiff had challenged the order passed by the Land Reforms Officer, and the Civil Court had no jurisdiction to hear and entertain the present suit. Learned Courts below proceeded without any jurisdiction. Hence, he prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. He relied upon the judgment of *Mata Din Vs. Sultan and others* (1986) 07 P&H CK 0002, *Sri Velji Narayan Patel Vs. Sri Jayanti Lal Patel* AIR 2009 Calcutta 164, *Balwant Singh and another Vs. Daulat Singh (dead) through LRs* AIR 1997 SC 2719, *Satyawan and others Vs. Raghbir* AIR 2002 P&H 290 and in support of his submission.

12. Mr Bimal Gupta, learned Senior Advocate for respondents No.1 and 2, submitted that the provisions of the Transfer of Property Act did not apply to Bhunter where the suit land is located. The learned courts below had rightly held that an oral exchange was permissible. The land was a part of an abadi, not subservient to agriculture and could not have been a subject matter of the tenancy under the H.P. Tenancy and Land Reforms Act. The learned Courts below have rightly appreciated the evidence, and there is no perversity in the judgments of the learned Courts below. Therefore, he prayed that the present appeal be dismissed. He relied upon the judgments titled *Dasandhi Ram and another Vs. Hans Raj ILR 1976 208*, *Dasaundhi Ram and another Vs. Hans Raj, SLJ 1985 293*, *Gulab Singh and others Vs. Dilbaru and another 1987 SCC Online HP 16*, *Sardara Singh and another Vs. Harbhajan Singh and others 1974 SCC OnLine P&H*, *Shiv Ram Vs. Bimla Devi 2000 SCC OnLine P&H*, *Paramjit Singh Vs. Ratti Ram 2004 SCC Online P&H* and *Randhir Singh Vs. Ranjit Singh 2010 SCC OnLine P&H* in support of his submissions.

13. 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:

14. The defendants relied upon the judgment (Ex. D1) passed in Civil Suit No. 188 of 1986 to establish that Sheetal Singh had filed a civil suit challenging the mutation and the subsequent orders passed by the revenue authorities. The suit was dismissed, and the present suit is barred by the principle of *res judicata*. The defendants did not file the copies of the pleadings in the previous suit.

15. It was laid down by the Hon'ble Supreme Court in *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, (1976) 4 SCC 780, that the respective pleadings of the parties in the previous suit have to be brought on record to determine the case of the parties. The recitals in the pleadings cannot be inferred from the judgment. It was observed (at page 790):

“8. In the instant case, according to the plaintiffs-respondents, the identity of the subject matter in the present suit is quite different from that which was adjudicated upon in the suits that formed the basis of the previous litigation. In our opinion, the best method to

decide the question of res judicata is first to determine the case of the parties as put forward in the respective pleadings of their previous suits and then to find out as to what had been decided by the judgments which operate as res judicata. Unfortunately, however, in this case, the pleadings of the suits instituted by the parties have not at all been filed, and we have to rely upon the facts as mentioned in the judgments themselves. It is well settled that pleadings cannot be proved merely by recitals of the allegations mentioned in the judgment.”

16. This position was reiterated in *V. Rajeshwari v. T.C. Saravanabava*, (2004) 1 SCC 551: 2003 SCC OnLine SC 1405, wherein it was observed at page 556:

“12. The plea of res judicata is founded on proof of certain facts and then by applying the law to the facts so found. It is, therefore, necessary that the foundation for the plea must be laid in the pleadings, and then an issue must be framed and tried. A plea not properly raised in the pleadings or issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal [see *(Raja) Jagadish Chandra Deo Dhabal Deb v. Gour Hari Mahato* AIR 1936 PC 258: 1936 All LR 786, *Medapati Surayya v. Tondapu Bala Gangadhara Ramakrishna Reddi* [AIR 1948 PC 3 : (1947) 2 MLJ 511] and *Katragadda China Anjaneyulu v. Kattaragadda China Ramayya* [AIR 1965 AP 177 : (1965) 1 An LT 149 (FB)]]. The view taken by the Privy Council was cited with approval before this Court in *State of Punjab v. Bua Das Kaushal* (1970) 3 SCC 656. However, an exception was carved out by this Court, and the plea was permitted to be raised, though not taken in the pleadings nor covered by any issue, because the necessary facts were present to the mind of the parties and were gone into by the trial court. The opposite party had ample opportunity to lead the evidence in rebuttal of the plea. The Court concluded that

the point of res judicata had throughout been in consideration and discussion, and so the want of pleadings or plea of waiver of res judicata cannot be allowed to be urged.

13. Not only does the plea have to be taken, but it has to be substantiated by producing copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case, only a copy of the judgment in the previous suit is filed in proof of plea of res judicata, and the judgment contains, in exhaustive or in requisite detail, the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in *Syed Mohd. Salie Labbai v. Mohd. Hanifa* (1976) 4 SCC 780, the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in the respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in *Gurbux Singh v. Bhooralal* AIR 1964 SC 1810 : (1964) 7 SCR 831, placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit, which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits, and, therefore, it is necessary for the defence that raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what the facts stated in the previous pleadings. Their Lordships of the Privy Council in *Kali Krishna Tagore v. Secy. of State for India in Council* (1887-88) 15 IA 186: ILR 16 Cal 173 pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can

be found out only by looking into the pleadings, the issues and the judgment in the previous suit.”

17. Therefore, it was necessary for the defendant to prove the pleadings in the previous suit, in the absence of which the plea of res judicata could not have been adjudicated, and this substantial question of law is answered accordingly.

Substantial Question of Law No.3:

18. The plaintiff asserted in para-4 of the plaint that previously the suit land had a 9x9 haath single-storeyed slate-roofed mud structure, which was rented out to Shanu Ram, a cobbler by occupation, on the annual rent of ₹5/-. The plaintiff never claimed that Shanu Ram was not a tenant of the suit land. He stated in the present suit that Shanu was a tenant. The copy of the memorandum of appeal filed by the plaintiff before the revenue officials was not brought on record to prove that plaintiff Sheetal Singh had admitted that Shanu Ram was a tenant on the date of passing of orders by the Land Reforms Officer. The copy of the mutation (Ex.P4) shows that Rirku, Roshan Lal, and Deep Kumar, son of Shanu, were present, who were identified by Heera Lal, Numberdar, who also acknowledged the possession of Rirku, Roshan Lal, and Deep

Kumar. Hence, the proprietary rights were conferred upon them. Plaintiff Sheetal Singh was not present before the revenue authorities and could not have acknowledged the status of Shanu as a tenant. Therefore, this substantial question of law does not arise in the present case.

Substantial Question of Law No.4:

19. The learned Courts below had concurrently held that the land was not agricultural but *gair mumkin abadi*. This is duly supported by the revenue record in which the suit land has been described as *gair mumkin abadi*. The defendants also asserted that Shanu Ram had raised the construction of a structure, and he was carrying out the occupation of a cobbler in that structure. The defendants claimed that earlier the land was agricultural and Shanu Ram had constructed a structure with the consent of Abdul Gir, but this is not supported by Misal Hakiyat Bandobast (Ex.DY), wherein Shanu is recorded to be in possession of old Khasra No.891/746 and new Khasra No.983, which is recorded as *Gair Mumkin Abadi*. Thereafter, the entry of *Gair Mumkin Abadi* continues. The revenue entry does not show that the land was being used for agriculture or was subservient to the agriculture.

Even the mutation of conferment of proprietary rights (Ex. D4) mentions the nature of the land as *Gair Mumkin Abadi*. Therefore, learned Courts below had rightly held that the land was not subservient to agriculture and would not fall within the definition of Section 2 (7) of the H.P. Tenancy and Land Reforms Act, and no proprietary rights could have been conferred regarding it. There is no misreading of the evidence by the learned Courts below, and this substantial question of law is answered accordingly.

20. The question whether the exchange was required to be effected by a registered document or not is not the subject matter of any Substantial Question of Law, hence the judgments cited at the bar need not be discussed.

Final order:

21. In view of the above, there is no infirmity in the judgments and decrees passed by learned Courts below, hence the present appeal fails and is dismissed.

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

15th June, 2026
(Chander)