

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA Nos. 452 & 459 of 2007.
Reserved on 21st December, 2019
Decided on : 27th April, 2020.

1. RSA No.452 of 2007.

Surekha & Another **...Appellants.**

Versus

Sudama Ram & Others **....Respondents.**

2. RSA No. 459 of 2007.

Sudama Ram **.....Appellant**

Versus

Surekha & Others **.....Respondents.**

Coram

The Hon'ble Mr. Justice Anoop Chitkara, Judge.
Whether approved for reporting?¹ Yes.

1. RSA No. 452 of 2007.

For the Appellant : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

For the respondents : Mr. Sanjeev Bhushan, Senior Advocate with Mr. Mohan Singh & Ms. Abhilasha Kaundal, Advocates for respondent No.1.

Mr. Ashwani K. Sharma & Mr. Nand Lal Thakur, Addl. A.Gs. for respondents No.2 and 4.

Mr. Naresh K. Gupta, Advocate for respondent No.3.

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

2. RSA No. 459 of 2007.

For the Appellant : Mr. Sanjeev Bhushan, Senior Advocate with Mr. Mohan Singh & Ms. Abhilasha Kaundal, Advocates.

For the respondents : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate for respondents No.1 and 2.

Mr. Ashwani K. Sharma & Mr. Nand Lal Thakur, Addl. A.Gs. for respondents No.3 and 5.

Mr. Naresh K. Gupta, Advocate for respondent No.4.

Anoop Chitkara, J.

Both these Regular Second Appeals were heard along with the connected cases bearing CWP Nos. 654 of 2000, 287 of 2001, 54 of 2019, and FAO No.315 of 2002, which are being decided simultaneously.

2) Both these appeals being arisen out of common judgment dated 25.6.2007, passed by learned Additional District Judge, Shimla are being taken up and decided together by a common judgment.

3) The facts apposite to decide the present appeals trace back to a plaint dated 3.11.1991, filed by plaintiff Surekha and her husband Ravinder Prakash

against Sudama Ram, who was arraigned as defendant No.1; Director, Town and Country Planning-Defendant No.2; Commissioner, Municipal Corporation, Shimla-Defendant No.3; and State of H.P. through its Secretary (Revenue)-defendant No.4, for declaration to the effect that there exist no path through Khasra No.192(355), and for possession of part of Khasra No.189, measuring 20' encroached by defendant No.1 by demolition of the structure raised by him, and for mandatory injunction directing defendants No.2 and 3 to remove the unauthorized construction of defendant No.1, the sanction of which has been obtained illegally, and further for permanent prohibitory injunction restraining defendant No.1 to dig/construct path through Khasra No.192 upon Khasra No.189, and directions to defendant No.2 and 3 not to allow/permit any path through Khasra No.192 old (355 new) in front of the house of the plaintiffs..

4) Defendant No.1 Sudama Ram filed written statement dated 23.2.1992, wherein his claim is that Khasra No.192 is a path, which leads to his land and

building. His further claim was that this path is in use since time immemorial, much prior to the time, he purchased the land in question from its previous owner. Defendant No.1 further stated that since the land comprised Khasra No.192 is owned by Government as such the plaintiff has no right, title or interest to file the Civil Suit and it is for the Government to protect its own land.

5) Defendant No.2, Director, Town and Country Planning has also filed written statement dated 20.7.1992. The stand of the Director, Town and Country Planning is that the department had sanctioned the building plan of defendant No.1 Sudama Ram relying upon the revenue document, which showed the approach road and subsequently Assistant Settlement Officer, Shimla vide its office letter No. Raj.A.M.L./91-1225, dated 20.6.91 has informed that the tatima supplied by defendant No.1 Sudama Rama was forged and the department consequently revoked the sanction vide letter No. HIM/TP-Case No. 3105/90-2323-27, dated 8.7.1991

6) The Municipal Corporation, Shimla, the third defendant has also filed its written statement and took the stand similar to the stand taken by the second defendant and mentioned that the Corporation had withdrawn the sanction.

7) The fourth defendant, State of Himachal Pradesh also took the similar stand.

8) The plaintiff did not file any replication.

9) On the pleadings of the parties, learned Sub Judge 1st Class framed the following issues on 15.10.1993:

1. Whether there exists no path through khasra No.192 as alleged? OPP
2. Whether the plaintiff is entitled for the relief possession of portion of khasra No.189 after demolish of the structure, as alleged?
OPP
3. Whether the plaintiffs are entitled for mandatory injunction, as alleged? OPP
4. Whether the plaintiffs are entitled to the relief of permanent prohibitory injunction?
OPP
5. Whether the plaintiffs have no locus-standi to file the suit? OPD

6. Whether the suit is bad for non-compliance of Section 80C.P.C. as alleged? OPD
7. Whether the suit is not maintainable, as alleged? OPD
8. Relief.

10) The plaintiff examined various witnesses including concerned Junior Engineer apart from himself stepping into the witness-box. The first defendant also examined the Junior Engineer of the Municipal Corporation, Shimla and also himself stepped into the witness-box as DW-7.

11) Vide judgment dated 22.12.1999, passed in Case No.199/1 of 95/91, learned Sub Judge 1st Class, Court No.1, Shimla partly decreed the suit by granting decree to the plaintiff to the effect that there is no path in Khasra No.192, as such Sudama Ram, defendant No.1 had no right to dig the same and thereby caused danger to the house of the plaintiff. Learned Sub Judge did not grant any relief on the other issues.

12) Feeling aggrieved, both the plaintiffs and defendant No.1 challenged the said judgment by filing Civil Appeals before learned District Judge, Shimla. Vide

common Judgment dated 25.6.2007, passed in Civil Appeal No. 2-S/13 of 2007/2K and Civil Appeal No. 3-S/13 of 2007/2K, learned Additional District Judge, Shimla dismissed both the appeals.

13) Challenging the said dismissal, both the plaintiffs and defendant No.1 have come up before this Court by filing the present Regular Second Appeals.

14) I have heard Mr. G.D.Verma, learned Senior Advocate, assisted by Mr. B.C. Verma, Advocate for the appellants in RSA No. 452 of 2007 and for respondents No.1 and 2 in RSA No.459 of 2007, Mr. Sanjeev Bhushan, learned Senior Advocate assisted by Mr. Mohan Singh & Ms. Abhilasha Kaundal, Advocates, for respondent No.1 in RSA No.452 of 2007 and for appellant in RSA No. 459 of 2007, Mr. Ashwani Sharma, and Mr. Nand Lal Thakur, Additional Advocates General for the respondents-State, Mr. Hamender Chandel, Advocate for the Municipal Corporation, Shimla and have also waded through the entire record.

15) The brief questions involved in this suit is the use of path by defendant No.1 Sudama Ram to his

house. The case of the plaintiff is that in fact no such path ever existed over Khasra No.192, and when the first defendant Sudama Ram applied for sanction of building plan, then initially the Municipal Corporation, Shimla rejected the same on the ground that no approach road exists to his land. The claim of the plaintiff is that subsequently the first defendant, in connivance with local Patwari, fabricated the revenue records and after tampering with the Musabbi, showed the path to his house and again applied for the sanction of building plan and on the basis of such fabricated documents got sanction thereof.

16) On 22.11.2010, a learned Single Bench of this Hon'ble Court visited the spot and recorded all the proceedings of spot visit. This order reads as follows:

"1. Pursuant to the order dated 16.11.2010, I had visited the spot on 22.11.2010 at 4.30 p.m. when the following were present:

Shri G.D. Verma, Senior Advocate alongwith Sh.Ravinder Parkash Verma husband of Smt.Surekha.

S/Sh.Sanjeev Bhushan and Mohan Singh, Advocates alongwith Sh.Sudama Ram.

S/Sh.K.L. Bali & Shrawan Dogra, Advocates alongwith officers of the Municipal Corporation S/Sh.Joginder Chauhan, Legal Advisor, R.C. Thakur, Architect Planner, N.S. Guleria, Assistant Engineer and Hem Raj, Junior Engineer.

Sh.Rajesh Mandhotra, Dy.A.G. alongwith forest officials S/Sh.Sushil Kapta, DFO, Gobind Singh Bali, Kanungo, Manohar Singh, Deputy Ranger, Mani Ram, Forest Guard, Shambu Dayal, Junior Assistant, Ms.Neelam Kumar, Patwari AND Revenue officials S/Sh. M.R. Bhardwaj, Tehsildar (Urban), Sh.Bishan Singh Thakur, Kanungo and Sh.Krishan Sharma, Kanungo.

2. After visiting the spot I found that the dispute falls within a very narrow compass. In my opinion, this entire dispute can be resolved easily. There are four stake holders involved. Firstly, the State Forest Department which admittedly owns some land which falls below the mettled pucca road commonly known as "M.I. Road" and above the house of Sh.Ravinder Parkash Verma. There exists a path from the M.I. Road through forest land leading to the house of Shri Sudama Ram. The question whether this path existed at the time when sanction was granted in favour of Sh.Sudama Ram and whether he has any right over it shall be decided later on. However, as observed by me, as on date there is a path on the spot about 4 to 5 ft. wide which goes to the house of Sh.Sudama Ram above the house of Sh.Ravinder Parkash Verma. This path is a kacha path and there are Deodar trees on both sides of the path. As one walks on this path from the M.I. Road towards the house of Sh.Sudama Ram the land of Sh.Ravinder Parkash Verma and Smt.Surekha Verma touches the forest land on the left hand side. One Deodar tree was found

fallen on the spot. It had in fact been cut and mostly removed. I was informed by the Revenue Officials that they had conducted demarcation and this tree fell in the land owned by the Forest Department. This fact was not seriously disputed by Sh.Ravinder Parkash Verma. On the edge of the boundary of the land of Shri Ravinder Parkash Verma, as pointed out to me on the spot, about 4 water tanks had been installed and when I inquired whether the land on which these water tanks were installed is forest land or land belonging to Sh.Ravinder Parkash Verma, the revenue authorities stated that it is a forest land and Sh.Ravinder Parkash Verma stated that if after demarcation it is found to be forest land he will remove the water tanks.

3.I also found that Sh.Ravinder Parkash and his wife had raised steps with railings on the back side of his house. Though I was informed by Sh.Ravinder Parkash that this is a retaining wall and not a staircase but to the naked eyes it is apparent that these were steps and not a retaining wall.

4. In between the house of Sh.Ravinder Parkash Verma and Sh. Sudama Ram there are steps leading to the lower storey of the house of Sh.Sudama Ram. The house of Sh.Ravinder Parkash Verma can be divided into two portions one the old portion which is obviously constructed many years back and second portion in which construction is still going on. A portion of the new construction virtually touches these steps or are very close to the steps. On the valley side the house of Sh.Ravinder Parkash Verma is being constructed in a triangular fashion and the corner of the triangle is barely at a distance of 2/3 ft. from the edge of the house of Sh.Sudama Ram.

5. The boundary of the property of Sh.Sudama Ram on the other side of his house is slightly unclear because one 'Burji' is alleged to have been fixed by one Col.Behal close to the house of Sh.Sudama Ram.

6. I was also informed that in settlement proceedings there has been some shifting of the map and 'karukans' have changed. There is a metalled road on one side of the land of Sh.Ravinder Parkash Verma. There is forest land on one side and there is a road leading to the Government School on the third side. Though new buildings of the school have been constructed but I am told that this Government School has been in existence for a very long time much before Sh.Sudama Ram and Sh.Ravinder Parkash Verma purchased their properties. No doubt the old building of the School does not exist but the boundaries of the School are the same.

7. Keeping in view the aforesaid facts, I direct the Tehsildar (Urban) Shimla to conduct fresh demarcation of the property. This demarcation will be conducted on or before 31.12.2010 in the presence of the parties and in the presence of the officials of Municipal Corporation as well as the forest officials. Therefore, notice of said demarcation will be given by the Tehsildar (Urban), Shimla to the learned counsel for the parties and not the parties themselves and it was the responsibility of the counsel to inform the parties of the date. The counsel are Sh.Romesh Verma, counsel for Sh.Ravinder Parkash Verma and Smt.Surekha Verma, S/Sh.K.L. Bali and Shrawan Dogra, counsel for Municipal Corporation, S/Sh.Sanjeev Bhushan and Mohan Singh, counsel for Sh.Sudama Ram, and Sh.Rajesh Mandhotra, Dy.A.G. for State. While demarcating the land the Revenue officials shall ensure that pucca points are fixed and

demarcation is carried out in accordance with the instructions issued by the Financial Commission as approved by the High Court in Chapter-1 Part-M of the High Court Rules and Orders.

8. The Revenue officials shall first demarcate the forest land and clearly indicate the boundary of the forest land with the land of Sh.Ravinder Parkash Verma and Sh.Sudama Ram. The Revenue officials shall clearly indicate whether the water tanks and the retaining wall in the form of steps falls in forest land or in the land of Sh.Ravinder Parkash Verma and Smt.Surekha Verma. It shall also be clearly indicated as to whether the steps leading from the rear of the house of Sh.Ravinder Parkash and in front of the house of Sh.Sudama Ram to the lower storey of the house of Sh.Sudama Ram fall in the land of Shri Sudama Ram or Sh.Ravinder Parkash Verma.

9. The Revenue officials shall also calculate the area of land in the possession of Sh.Ravinder Parkash Verma and Smt.Surekha Verma, both built up and vacant. They shall also calculate the area in the possession of Shri Sudama Ram both built up and vacant. The boundary of the school shall be identified with the help of permanent pucca points and the help of school officials so that there is no dispute later.

10. In the demarcation the distance between the trees which have fallen and which are standing from the houses of Sh.Ravinder Parkash Verma and Sh.Sudama Ram will be indicated in clear-cut terms.

11. The Commissioner, Municipal Corporation shall also on or before the next date file an affidavit on the following issues:

- i) What were the norms relating to set-backs when the plan(s) of Sh.Sudama Ram and Sh.Ravinder Parkash Verma &

Smt.Surekha Verma were sanctioned and what are the norms in this regard as on date.

ii) What were the norms relating to the distance from trees to construction when the plan(s) of Sh.Sudama Ram and Sh.Ravinder Parkash Verma & Mrs.Surekha Verma were sanction and what are the norms in this regard as on date.

12. The Revenue authorities shall also clearly indicate what was the area owned by Sh.Ravinder Parkash Verma and Sh.Sudama Ram prior to settlement and after settlement and how this area has changed. The Revenue officials shall clearly indicate how the change has been brought about in the revenue record.

13. It is obvious that the dispute is more in the nature of the boundary dispute and therefore the revenue officials i.e. the Tehsildar (Urban), Shimla is appointed to carry out demarcation in the aforesaid terms.

List on January 5, 2011. A copy of this order shall be sent by the Registrar General of this Court to the Tehsildar (Urban) Shimla, by hand, so as to reach him within 48 hours. Dasti copy."

17) Subsequently, the Tehsildar submitted the report. A perusal of the report reveals that the Tehsildar visited the spot on 9.2.2011. At the time of spot inspection Ms. Surekha, Mr. Ravinder Prakash and Mr. Sudama Ram were present. Apart from them, Mr. Tara Singh Kanwar, Range Forest Officer, Mr. N.S. Guleria,

Assistant Engineer, Municipal Corporation, Shimla Mr. Hem Raj, Junior Engineer, Municipal Corporation, Mr. Jai Singh Garg, Superintendent, Government Senior Secondary School, Summerhill and other Revenue Officials were present. After conducting the demarcation, the Tehsildar, reported as follows:

- a) That on the spot Mr. Ravinder Prakash and Ms. Surekha had kept four water tanks, which were on the boundaries of Khasra Nos.354 and 355. Khasra No.354 is owned by Mr. Ravinder Prakash whereas Khasra No.355 is in the ownership of the State Government.
- b) The stairs space behind the house of Mr. Ravinder Prakash were on Khasra No.353, which is in the ownership Mr. Ravinder Prakash and Smt. Surekha.
- c) The constructed portion of the building of Mr. Ravinder Prakash and Ms. Surekha was 176-48 square meters.
- d) The constructed portion of Mr. Sudama Ram's building was 66-41 square meters.

- e) Mr. Ravinder Prakash and Ms. Surekha have encroached upon the land of Education Department on Khasra No.358/2 measuring 23-45 square meters, which is illegal encroachment.
- f) Mr. Sudama Ram has also encroached upon the land of the State Government at Khasra No.358/1, measuring 29-69 square meters, which is illegal encroachment.
- g) Mr. Sudama Ram has encroached upon the land measuring 4-90 square meters on Khasra No.353/1, which is in the ownership of Mr. Ravinder Prakash and Ms. Surekha, which is also illegal encroachment.
- h) In comparison to the previous settlement, the total land of Mr. Ravinder Prakash and Mrs. Surekha increased to the extent of 26-21 square meters.
- i) In comparison to the previous settlement, the total land area of Mr. Sudama Ram decreased by 4-04 square meters.
- j) Mr. Ravinder Prakash and Ms. Surekha have expressed their full

satisfaction and Mr. Sudama Ram has expressed his dissatisfaction to the demarcation.

18) Two facts stand fully proved in this case. Firstly that the concerned Patwari had tampered with the revenue record and had wrongly shown a path over Khasra No.192 in Partal Sajra Kistwar. This aspect traces its origin to a complaint filed by the plaintiff before Settlement Officer, District Shimla, HP, on 18.3.1991. The Plaintiff informed the Settlement Officer that Sudama Ram, the 1st Defendant, had constructed his house by misstating the facts about the path that would connect his proposed house to the Government road. Mr. Ravinder Parkash explicitly stated that the road shown was, in fact, property of the Government.

19) Vide order dated 1.6.1991, Ld. Assistant Settlement Officer found substance in the complaint and observed that the boundaries had been inspected and noticed the old cemented burjis. During this inquiry, the petitioner, Mr. Ravinder Parkash Verma, gave another application to the inquiry officer and leveled allegations

that the approach road to the house of Mr. Sudama Ram, the 1st defendant herein, passes through the Government land. On this, the statements of the concerned Junior Engineer of the Municipal Corporation, as well as the Revenue officers, were also recorded. It surfaced in the inquiry that Hari Chand, who was posted as Patwari at that area, issued a tatima dated 13.6.1989 to Mr. Sudama Ram. In this, Tatima showed the path and gave a separate khasra number to this path by assigning a new number 192/2. The inquiry found that this Tatima was prepared in the absence of the corresponding reference in fard Inspection.

20) Ld. Assistant Settlement Officer ordered the correction of revenue records by removing new entries against khasra no. 192/2 old (355/1 new) and only khasra no. 355 be shown. It also issued a further direction, which is not the subject matter of this writ petition.

21) Mr. Sudama Ram challenged this order before Ld. Divisional Commissioner, who upheld the same in Revenue Appeal No. 117/91.

22) Feeling aggrieved, Mr. Sudama Ram filed an appeal under Section 14 of the H.P.Land Revenue Act before Financial Commissioner. Vide order dated 6.6.1995, Ld. Financial Commissioner dismissed the appeal and also issued guidelines to the Revenue officials.

23) This matter has attained finality. Even otherwise, the evidence adduced by the defendant to confront the claim of the plaintiff about non-existence of path is not sufficient. The first defendant could not prove through oral as well as documentary evidence that the path in question over Khasra No.192 was an old path in use prior to his purchase of land. Therefore, the findings of learned Courts below recorded on issues that no path existed over Khasra No.192 are legally correct and are accordingly upheld.

24) Now coming to the second aspect of the matter, it is also not in dispute that right from the construction of the house of first defendant Sudama Ram, he and all the occupants of the building are continuously using the path passing through Khasra

No.192. Simply because Sudama Ram defendant No.1 is using this path over the Government land would not entitle him to widen the same or to further excavate so as to endanger the properties of the others.

25) To close the matter at this stage would although, do the Justice in 'Letter' but not in its 'Spirit.' However, to do the substantial Justice, it is pertinent to mention the great efforts put by a single co-ordinate bench of this Court a decade ago. On 22-11-2010, the Hon'ble Judge of this Court visited the spot. Vide order dated 23-11-2010 (supra), in CWP No. 654 of 2000 along with CWP No. 287 of 2001, FAO No.35 of 2002, RSA No. 452 of 2007, and RSA No. 459 of 2007, Hon'ble Court recorded all the proceedings of spot visit.

26) Given the ground reality that Mr. Sudama Ram had purchased his land before the purchase of property by Mr. Ravinder Parkash and his wife Mrs. Surekha; and Mr. Sudama Ram had constructed his building before 1990, and Mr. Sudama Ram and the other occupants of the building are using this path for almost three decades. Consequently, to bring an end to

all the disputes between the parties, and to do the substantial Justice, this Court clarifies that it shall be open for the State Government/Central Government to change the nature and usage of the land being used as aforesaid path and to authorize Municipal Corporation Shimla to declare this land as public path/road, provided the beneficiary Mr. Sudama Ram Sharma, or any other person who subsequently acquires interest in the land/building, and also compensate the State of HP as well as the Central Government, who are the owners of the land in the revenue records, to the extent of their respective shares, which is allegedly used as the approach road to his house, by paying the market value of the land utilized for dedicated to the road or used in the road, along with interest at the rate of 1% per month from the date of assessment until its payment by Mr. Sudama Ram Sharma or his successors. At the time of assessment of market value, the State shall associate Mr. Ravinder Parkash and consider his views as well as consider any valuation report placed by him, to determine the prevailing market price of the land in

issue. This Court hopes that the authorities of the Central and the State Government shall take a lenient view in permitting Mr. Sudama Ram to use this land as path/road towards his house keeping in view the fact that there is no other approach road to his house. It is further clarified that Mr. Ravinder Parkash, Mrs. Surekha and their successors, shall be entitled to connect their property from this approach road, and the General Public shall also be entitled to use this path, without any obstacle, hindrance or obstruction by any person, whom so ever.

27) Mr. Ravinder Prakash and Mrs. Surekha are directed to remove their encroachments from the land of Government Senior Secondary School, Summerhill, if not already vacated, on or before 31st December, 2020 and shall ensure that no portion of their water tanks falls over the Government land.

28) Mr. Sudama Ram is also directed to remove his encroachment from the Government land on or before 31st December, 2020. However, there is no record in any of the file to prove that at subsequent

stage Mr. Sudama Ram had challenged the demarcation report dated 9.2.2011. In case he had challenged the same then Mr. Sudama Ram shall abide by the final verdict of the said challenge, if any. However, if Mr. Sudama Ram did not challenge the same, then because of lapse of time and on the grounds of limitation, despite Mr. Sudama Ram did not accept the demarcation report, it has attained finality, even qua him. Consequently, in either of the situation Mr. Sudama Ram shall remove all his encroachments from the Government land as mentioned in the demarcation report or its final outcome, if any, on or before 31st December, 2020.

29) Given observations, hereinabove both the regular second appeals are disposed of in the aforesaid terms.

April 27, 2020 (ps)

**(Anoop Chitkara)
Judge.**