



IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No. 269 of 2003.

Reserved on : 16th October, 2017.

Decided on : 31st October, 2017.

Hans Raj and others **..... Appellants/Plaintiffs.**

Versus

Shayam Lal and others **.....Respondents/Defendants.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellant(s): Mr. Ajay Sharma, Advocate.

For respondent No.1, 3 to 7. Mr. K.D. Sood, Sr.
Advocate with Mr. Rajnish K. Lal,
Advocate.

Nemo for other respondents.

Sureshwar Thakur, Judge.

The plaintiffs instituted a suit against the defendants claiming therein a decree for declaration, that plaintiff No.1, is, Mohtmim and sole owner of the suit property and defendants No.1 to 7 were not owners of

¹ Whether reporters of the local papers may be allowed to see the judgment?



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the suit property, consequently, sale deed of 24.8.1990 executed qua the land comprised in Khata No.295, Khatauni No. 621, Khasra No.460 min, by deceased Puran Chand and defendant No.2 Siri Krishan, vis-a-vis defendant No.8, being wrong, illegal, unauthorised and ineffective. The suit of the plaintiffs was dismissed by the learned trial Court. Upon standing aggrieved by the verdict rendered by the learned trial Court, the plaintiffs/appellants herein, concert to assail it, by preferring therefrom the instant appeal.

2. The plaintiffs' case in brief is that the suit property was owned by Duni Chand Shah, who was succeeded by widow of Roop Devi. Rood Dvi created Trust, qua the suit property on 1.5.1946, known, as Sha Duni Chand Bhardial Trust, Pragpur. She appointed herself as President of the Trust and nominated Pt. Jaishi Ram, Roop Lal, Palu Ram, Khusi Ram, Pohlo Ram and Kanhahya as trustees. Now defendants No.1 to 7 are



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trustees of the Trust. Puran Chand, trustee died on 14.11.1998 and in place, defendant No.7 is acting as trustee. Claimed, that plaintiff is successor of Roop Devi, original owner of the trust property, which he succeeded vide mutation No.672 of 10.07.1949 to the extent of $\frac{1}{2}$ share and remaining half was succeeded by Jagan Nath and Baikunthi Devi. After death of Balak Ram, father of the plaintiffs, plaintiff No.1 was appointed as Mohtmim. Further claimed that Khushi Lal etc., trustees had filed civil suit No.237/52 against Jagan Nath etc., successors of Roop Devi, which was decreed for possession qua the trust property. But trustees, in collusion with revenue staff got transferred the property of trust though they were only trustees and not owners of its property. Defendant No.8 was never inducted as tenant by Roop Devi nor defendants No.1 to 7 trustees had any authority to induct him as tenant over the trust property, as they were not owners and were trustees, to maintain the



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property and keep its accounts. Further pleaded that defendants No.1 to 7, trustees are not managing the trust property properly and they were not authorised to change its nature and sale of the trust property by trustee Puran Chand, deceased and defendant No.2 Siri Krishan in favour of defendant No.8 vide sale deed of 21.8.1990 is illegal, unauthorised and not binding upon the plaintiff being Mohtmim. Trustees have not discharged their duties properly and consequently not entitled to continue as trustees and liable to be removed from the trust. So, defendant No.8 gets no title or interest in the trust property, sale being illegal, unauthorised and ineffective. Defendants No.8 to 10, consequently, liable to be prohibited from cutting any tree from the trust property or raising any construction thereon.

3. The defendants No.1 to 5 and 7 contested the suit and filed joint written statement, wherein they have



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taken preliminary objections qua maintainability, locus standi, cause of action, resjudicata, valuation, non joinder of necessary parties, limitation, barred under Order 2, Rule 2 of the CPC. On merits, it was denied that plaintiff No.1 is owner or Mohtmim of the trust property. However, it is admitted that Roop Devi being owner of the trust property created trust vide deed dated 1.5.1946 and nominated trustees and herself as President of the trust. It is also admitted that defendants No.1 to 6 at the moment are trustees of the trust created by Roop Devi. It is averred that after creating of trust, Roop Devi ceased to be owner of the trust property and her heirs on death succeeded to her property which was not donated by her to the trust. Mutation No.672 never operated qua trust property. It is submitted that Roop Devi owned about 1011 kanals of land out of which only 40 kanals and some shops were donated to the trust. It is denied that Balak Ram, father of the plaintiffs was ever a trustee or



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Mohtmim of trust and after his demise, Plaintiff No.1 became its Mohtmim. It is admitted that civil suit No.237/52 filed by the trust against Jagan Nath and others for possession was decreed. It is averred that defendant No.8 was never inducted tenant by them over the suit property, however, it is submitted that predecessor-in-interest of defendant No.8, namely, one Kanu Ram was already tenant of the land at the time of creation of the trust and tenancy devolved upon defendant No.8. It is further submitted that all the trustees of the trust are honestly and sincerely running the affairs of the trust. All accounts of the trust are properly and regularly maintained. Sale of the trust property to defendant No.8 was an act of prudence of good management, to avoid unnecessary and unfruitful expenditure by way of litigation qua trust property. The land was thus sold to avoid litigation for a consideration of Rs.42,000/- and the sale consideration was deposited



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with Central Bank of India, Pragpur. No written statement to the plaint was filed by defendant No.8 to 10.

4. The plaintiffs filed replication to the written statement of the defendant(s), wherein, they denied the contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

5. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:-

1. Whether the plaintiff No.1 is the Mohtmim and sole owner and successor-in-interest of Smt. Roop Devi wd/o Duni Chand, of the suit property, as per the trust deed dated 1.5.1946?OPP.
2. Whether the entries in the revenue record in favour of defendants No.1 to 7 as trustees are wrong, illegal, unauthorised, ineffective on the rights of the plaintiffs and are null and void?OPP
3. Whether sale deed dated 24.8.1990 by Puran Chand deceased and defendant No.2, in favour of defendant No.8 is wrong, illegal and ineffective?OPP.
4. Whether the plaintiffs are entitled to the relief of possession and permanent



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injunction as against defendants No.8 to 10?OPP.

5. Whether the suit is not maintainable in the present form?OPD.
6. Whether the plaintiffs have no locus standi to sue?OPD.
7. Whether the plaintiffs have no cause of action to file the present suit?OPD.
8. Whether the suit is barred under the principles of resjudicata?OPD.
9. Whether the suit is not correctly valued? OPD.
10. Whether the suit is bad for non joinder of necessary parties?OPD.
11. Whether the suit is not within time?OPD.
12. Whether the suit is barred under Order 2, Rule 2, CPC?OPD.
- 12.A. Whether defendants No.1 to 7 are liable to be removed as trustees, as they have not managed the trust property, according to the trust deed, as alleged?OPP.
13. Relief.

6. On an appraisal of evidence, adduced before the learned trial Court, it proceeded to dismiss the suit of the plaintiffs.



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7. Under conclusive judicial verdicts, respectively borne in Ex.P-12 and in Ex.P-63, the suit land was pronounced to be holding all the characteristics, of, hence its being classified, as, trust property. The conclusive renditions borne in the aforesaid exhibits, are thereupon open for forming of an apt inference, of, the suit property being a trust property.

8. Be that as it may, prior to the institution of the extant suit, the plaintiff in both, one, Hans Raj, the successor-in-interest of one Balak Ram, arrayed as co-defendant in Civil Suit No.116/91, instituted qua the suit khasra numbers borne therein before the learned Sub Judge, Dehra, holding, complete analogy with the suit khasra numbers borne in the extant suit bearing Civil Suit No. 2-G/1 of 1999 also in both, the earlier and in the extant suit, there is a visible conformity in respect of arraying of litigants, "thereupon", as depicted by Ex. D-6, the learned Sub Judge, Dehra, on, anvil of the apposite



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statement recorded before him, proceeded to dismiss as withdrawn, civil suit No.116 of 91. However, no liberty for its re-institution was accorded vis-a-vis the plaintiffs. Consequently, the learned trial Court, concluded, that with (I) Ex.D-6, not, making any graphic echoings or visible articulations, in respect of dismissal, as withdrawn, of the plaintiffs' previous suit, being, also with a liberty granted to the plaintiff for its reinstitution, thereupon, (ii) rendered attractable vis-a-vis the extant suit, the bar enshrined in the provisions of Order 23, Rule 1 CPC, provisions whereof stand extracted hereinafter:-

“1. Withdrawal of suit or abandonment of part of claim.- (1) At any time after the institution of a suit the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules to 14 of Order XXXII extend, neither the suit nor any



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part of the claim shall be abandoned Without the leave of the court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the court is satisfied,—

a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

(4) Where the plaintiff,—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.



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(5) Nothing in this rule shall be deemed to authorise the court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

9. For testing the validity of the pronouncement made by the learned trial Court, specifically, in respect of the extant suit being hit by the principle of estoppel, contemplated in the provisions of Order 23, Rule 1 (4)(b) of the CPC, besides for attracting their mandate vis-a-vis the extant suit, it is necessary to cull out from (a) the memo of parties; (b) suit property embodied in the previous suit and in the extant suit ; (c) the relief(s) claimed in the earlier suit and in the extant suit, qua hence emanations upsurging therefrom , (d) of apparent analogities or similarities, on all facets aforesaid, eminently occurring inter se the previous suit vis-a-vis the extant suit; (e), whereupon, alone attraction by the learned trial Court, of, the principle of estoppel enshrined in Order 23, Rule 1 of the CPC, would hence be construed



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to be validly drawn. In the aforesaid endeavour, the plaint in the previous suit bearing Mark-A reveals, of, (i) it being inter se the plaintiff(s) herein vis-a-vis alike plaintiff(s) therein; (ii) it being instituted against alike co-defendants therein vis-a-vis co-defendant(s) herein; (iii) the suit khasra numbers embodied therein uncontrovertedly, holding, analogy vis-a-vis the suit khasra numbers embodied in the extant plaint and (iv) the relief(s) canvassed therein, tritely, in respect of quashing and setting aside of the sale deed executed by the defendant(s) concerned vis-a-vis co-defendant No.8, also holding affinity in both suits. (v) It being specifically averred in both the suit(s), of, the aforesaid alienation being a vivid display, of, palpable mismanagement, of, the trust property by the defendants concerned. Cullings of the aforesaid similarities, by this Court, tritely, in respect of existence of the imperative statutory parameters inter se the previous plaint vis-a-vis the extant



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plaint, hence, begetting satiation, does thereupon foster, an inference, of, attraction vis-a-vis the extant suit, by the learned trial Court, of the principle of the statutory estoppel, not, suffering from any vice of any invalidity.

10. Reinforced vigour to the aforesaid conclusions, stand galvanized from the factum, of, the rendition, dismissing as withdrawn, the previous suit, pronounced by the learned Sub Judge, Dehra, order whereof is borne in Ex-D-6, not, visibly granting any leave to the plaintiff, to, institute a fresh suit on cause(s) of action, holding, absolute similarity inter se the ones borne therein vis-a-vis the one(s) canvassed herein. There occurs a recital in Ex.D-6, of, the dismissal of the previous suit, as withdrawn, by the learned Sub Judge, Dehra, being, a sequel to a statement recorded by the concerned. However, a perusal of the apt statement, recorded by the learned counsel appearing for the plaintiff, in the previous suit, reveals of his not seeking the liberty of the



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court concerned, to institute a fresh suit, thereupon, it is not open for the learned counsel appearing for the appellants/plaintiffs herein to contend, of, the litigant concerned, or his counsel in hence making a statement, wherein, permission of the Court concerned, for withdrawal of the previous suit, was sought, both therein also seeking leave, from, the Court concerned, for, re-instituting it afresh. Contrarily, hence, the fiat of Ex.D-6 is expansive, for, excluding the plaintiff, from, contending that hence there was an implied leave to the plaintiff(s), for, instituting afresh, the extant suit, also he is forestalled from contending that attraction vis-a-vis the extant suit, of the principle of estoppel embodied in Order 23, Rule 1 of the CPC, being both unfounded and misfounded.

11. The above discussion unfolds the fact that the conclusions as arrived by the learned trial Court are based upon a proper and mature appreciation of



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evidence on record. While rendering the findings, the learned trial Court have not excluded germane and apposite material from consideration.

12. In view of the above discussion, there is no merit in the instant appeal, which is accordingly dismissed. The impugned judgment and decree is maintained and affirmed. All pending applications also stand disposed of. No order as to costs. Records be sent back.

31st October, 2017.
(jai)

(Sureshwar Thakur)
Judge.