



2026:HHC:13512

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 51 of 2023

Date of decision: 21.04.2026

Satish Kumar (deceased) through LRs & others ...Appellants

Versus

Vinod Gupta & others ...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the appellants : Mr. Sanjay Jaswal, Advocate.

For the respondents : Mr. Neeraj K. Sharma, Senior Advocate
with Mr. Hemant K. Thakur and
Mr. Vidush Chauhan, Advocates.

Romesh Verma, Judge :

The present appeal arises out of judgment and decree, as passed by learned District Judge, Kangra at Dharamshala, District Kangra, dated 29.11.2022, whereby the appeal preferred by the present respondents/counter claimants was allowed and the decree for possession was granted to the counter claimants with respect to the suit land, and the judgment and decree as passed by learned Senior Civil Judge, Kangra, District Kangra, H.P. dated 23.09.2017, dismissing the counter claim of the defendants/respondents, was set aside.

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



2. Brief facts of the case are that the present plaintiffs/appellants filed a suit for declaration with consequential relief of permanent and mandatory injunction against the defendants to the effect that the entries in the revenue record pertaining to possession in the name of the defendants are illegal, wrong and unauthorized. By removing the names of the plaintiffs and proforma defendants, the defendants are in possession, however, the plaintiffs are legally and factually entitled to remain in possession and enjoy the usufructs of the suit land bearing Khata No.62 min, Khatauni No.162 min, Khasra Nos.383, 385, 386, plots No.3, measuring 0-31-05 hecets, situated at Mohal Kahalian, Mauza Lanj, Sub Teshil Harchakian, Tehsil and District Kangra. It has been averred in the plaint that the suit land is entered in the ownership of the defendants and the same was previously owned by the State of Himachal Pradesh. The land was allotted to the defendants and thereafter the defendants became owner of the same. The plaintiffs and proforma defendants are in continuous possession of the suit land since time immemorial as co-shares. The plaintiffs and proforma defendants have not been ejected by any competent authority and the possession of the suit land has not been delivered to the defendants up till now. The plaintiffs and proforma defendants are in actual physical possession of the suit land on the spot.



3. It was further averred that the predecessor of the plaintiffs had filed a civil suit against the defendants in the Court of Sub Judge III Class(I), Kangra at Dharamshala for declaration and permanent injunction and the said suit (Civil Suit No.34/84) was decreed vide judgment and decree dated 16.03.1988 in favour of the plaintiffs.

4. Feeling dissatisfied, the defendants preferred an appeal against the judgment and decree dated 16.03.1988 before the learned District Judge, Kangra at Dharamshala and the learned first appellate Court partially accepted the appeal preferred by the defendants and decree with respect to declaration was set aside and the possession of the plaintiff was found to be over the suit land. Further, it was ordered that the plaintiff and proforma defendants cannot be evicted save and except by due process of law.

5. The defendants moved an application for ejectment of the plaintiff and proforma defendants before the Tehsildar, Kangra (Assistant Collector 2nd Grade). The said application was dismissed by the Collector vide its order dated 03.10.1994 directing the defendants to approach the competent Court of law for redressal of their grievances.

6. As per the case of the plaintiffs, the defendants are very headstrong persons and have no regard for law and taking undue advantage of the wrong revenue entries, are threatening to take forcible possession of the suit land. The entries in the possession



column of revenue record in the name of the defendants have been wrongly, illegally and arbitrarily made without any order of the competent authority. Therefore, the suit was filed by the plaintiffs seeking declaration and permanent prohibitory injunction from the learned trial Court.

7. The suit was contested by the defendants by filing a written statement along with counter claim. The defendants raised various preliminary objections with respect to maintainability, cause of action, non-joinder etc. On merits, all the averments as made in the plaint were refuted and denied. It was stated that the defendants are the owners of the suit land on the basis of allotment. As far as findings in the previous round of litigation are concerned, those were admitted. All the averments as made in the plaint were refuted and by means of counterclaim, it was prayed that decree of permanent prohibitory injunction be passed against the plaintiffs.

8. The plaintiffs filed replication to the written statement as filed by the defendants.

9. Learned trial Court framed issues in the matter on 26.05.1998, 02.09.2003 and 22.09.2017 in the following manner:

1. *Whether the plaintiffs are in possession of the suit land, as alleged? OPP*
2. *Whether the revenue entries showing the contesting defendants in the possession of the suit land, are wrong, null and void, as alleged? OPP*



3. *Whether the plaintiffs are entitled to the relief of permanent prohibitory injunction, as prayed for? OPP.*
4. *Whether the suit is not maintainable in the present form? OPD.*
5. *Whether the plaintiffs have cause of action and locus standi to sue? OPP.*
6. *Whether the jurisdiction of the court is barred, as alleged? OPD*
7. *Whether the judgment in civil appeal No. 36/1988 dated 13-3-1990 operates as resjudicata? OPD*
8. *Whether the suit is barred by limitation? OPD*
9. *Whether the State of H.P. is a necessary party to the suit, as alleged, if so, its effect? OPD*
- 9(a). *Whether the defendants are entitled for the possession of the suit land, as alleged by way of counter-claim? OPD.*
- 9(b). *Whether Counter-Claim of defendant No.1 is time barred, as alleged? OPNCC.*
- 9(c). *Whether Counter-Claim is maintainable, as alleged? OPNCC.*
10. *Relief.*

10. Learned trial court directed the respective parties to adduce evidence in support of their contentions to corroborate their respective case and ultimately, the learned trial court vide its judgment and decree dated 23.09.2017 dismissed the suit as preferred by the plaintiffs as well as counterclaim as preferred by the defendants/respondents.

11. The plaintiffs did not assail the judgment and decree as passed by learned Senior Civil Judge, Kangra dated 23.09.2017 and it is only the defendants/counter claimants who preferred the appeal



before the learned District Judge, Kangra at Dharamshala on 11.12.2017. Learned first appellate Court vide judgment and decree dated 29.11.2022, accepted the appeal as preferred by the defendants/counter-claimants and the counter claim was decreed by directing the plaintiffs/non-counter claimants to hand over the possession of the suit land comprised in Khata No.62 min, Khatauni No.162 min, Khasra Nos.383, 385, 386, plots No.3, measuring 0-31-05 hects situated at Mohal Kahalian, Mauza Lanj, Sub Teshil Harchakian, Tehsil and District Kangra to the present respondents/defendants/counter claimants.

12. Still feeling aggrieved, the plaintiffs have approached this Court by filing the present regular second appeal.

13. It is contended by Mr. Sanjay Jaswal, learned counsel for the plaintiffs/appellants, that the judgments and decrees as passed by learned Courts below are erroneous and liable to be quashed and set aside. Learned first appellate Court has failed to appreciate the real point of controversy and has wrongly decreed the counterclaim by ordering to handover the possession of the suit land to the counter-claimants/defendants/respondents. He further submits that learned first appellate Court has erred by misreading and mis-appreciating the evidence placed on record.

14. On the other hand, Mr. Neeraj K. Sharma, learned senior counsel, duly assisted by Mr. Hemant K. Thakur and Mr. Vidush



Chauhan, Advocates, has defended the impugned judgment and decree as passed by learned first appellate Court. He submits that the findings as returned by learned first appellate Court are legal, valid and sustainable and on the strength of ownership, the only order/judgment which could have been passed by learned first appellate Court has been passed in their favour.

15. I have heard learned counsel for the parties at length and have also gone through the record minutely.

16. With the consent of the parties, the case is heard finally at the admission stage.

17. The case, as set up by the plaintiffs in the present proceedings by filing a suit for declaration of permanent prohibitory and mandatory injunction, is that they are in possession of the suit land along with proforma defendants. It has been averred in the plaint that previously, one suit was instituted by the predecessor of present plaintiffs in the Court of learned Sub Judge III Class (I), Kangra at Dharamshala on 17.02.1984. The said suit was filed by Malkiati Devi against Hukam Chand and others. The copy of judgment as passed by learned Sub Judge III Class (I) Kangra at Dharamshala has been placed on record as Ext. P-4. In the said suit, while deciding issue No.7 learned trial Court came to the conclusion that the plaintiff Malkiati Devi along with proforma defendants has acquired title by means of adverse possession. Vide judgment and decree dated



16.03.1988, the suit filed by the plaintiff was decreed declaring her to be owner-in-possession of the suit land along with proforma defendants in the said suit and defendant No.2 (State of Himachal Pradesh) is not competent to allot the same to defendant No.1 (present defendant) and that the allotment as made by defendant No.2 in favour of defendant No.1 is illegal, null and void, ineffective and inoperative and the plaintiff and proforma defendants are not bound by the same as they have acquired title by efflux of time and they are entitled to remain on possession thereof in future also.

18. Feeling dissatisfied, the predecessor of the present defendants, namely, Hukam Chand preferred an appeal in the Court of learned District Judge, Kangra at Dharamshala on 22.04.1988. Learned first appellate Court partially accepted the appeal preferred by the defendant in the said proceedings, whereby the decree of declaration passed by learned trial Court was set aside, whereas it was held that the present plaintiffs and proforma defendants cannot be evicted except by due process of law as contemplated under the H.P. Village Common Lands (Vesting & Utilization) Rules framed under the H.P. Act in 1975. Learned first appellate Court passed the judgment and decree on 13.03.1990. Thereafter, the predecessor-in-interest of the present respondent, Hukam Chand, filed an application before the Consolidation Officer-cum-Tehsildar, Kangra. The copy of the same is Ext. P-3. The said application was dismissed by the Tehsildar Kangra



on 03.10.1994 holding that the said proceedings are not competent and the parties may avail appropriate remedy under the relevant provisions of law. After the passing of the order by the consolidation officer-cum Tehsildar dated 03.10.1994, the plaintiffs filed a suit for declaration, permanent prohibitory injunction and mandatory injunction and in the alternative for possession. Learned trial Court dismissed the suit as preferred by the plaintiffs as well as the counter claim as preferred by respondent/defendant.

19. The counter claimants preferred an appeal before the learned District Judge, Kangra whereas the plaintiff did not assail those findings before the learned first appellate Court. The learned first appellate Court held that on the basis of allotment, which was made in favour of the defendants they are owners of the suit land and on the other hand, it was held that the plaintiffs are in possession and their possession is without any right, title or interest. It was further held that since the counter claim as filed by the defendant is based upon the title, therefore, they are certainly entitled for the relief of possession as sought from the plaintiff and based upon that counter claim as preferred has been ordered to be decreed. The record reveals that in the previous round of litigation, the present plaintiffs have set up a plea of adverse possession, though the learned trial Court decreed the suit of the plaintiffs by holding the plaintiffs along with proforma defendants to have acquired title on the basis of adverse possession but the said



findings were set aside by learned District Judge on 13.03.1990.

Learned first appellate Court had reversed the finding with respect to acquiring of title on the basis of adverse possession and the appeal was partly accepted whereby the decree of declaration was set aside and liberty was given to the defendants to evict the plaintiffs by due process of law.

20. In the present case, admittedly after the dismissal of the suit as filed by the plaintiffs they did not assail the said findings before the learned first appellate Court meaning thereby they accepted the judgment and decree as passed by learned trial Court. Only the counter claimants preferred the first appeal and the same came to be allowed by the learned district Judge, Kangra. Though various contentions have been raised by learned counsel for the appellants, including the merits of the suit, but in view of non-filing of the appeal against the judgment and decree passed by learned trial Court, the appellants cannot be permitted to raise the points which were urged in the plaint. The defendants/respondents acquired the title on the basis of allotment which was made to them by the State of Himachal Pradesh on 14.11.1981 and the necessary mutation was attested on 24.12.1982. Even otherwise, the pleadings in the previous round of litigation reveal that once the plaintiffs themselves have raised the plea of adverse possession against the defendants, it implies that they admit the defendants to be owner of the suit land. The findings of



adverse possession were set aside by learned District Judge on 13.03.1990 and thereafter those findings were not assailed in any Court of law. To the similar extent the allotment order was not challenged by the plaintiffs before the competent court of law which implies that after the allotment of the land by the State of Himachal Pradesh, it is the defendants who are the owners of the suit land. Therefore, on the basis of title, the counter claimants are well within their right to claim possession of the suit land.

21. Learned District Judge has rightly decided the controversy in hand and has rightly come to the conclusion the counter claimants are entitled for the possession of suit land from the plaintiffs/non-counter claimants. The appellants have failed to show any perversity in the impugned judgment as passed by learned first appellate Court, as a result of which no interference is required in the same.

22. The Hon'ble Apex Court while dealing with the scope of Section 100 of the Code of Civil Procedure in **Gurnam Singh (dead) by Legal Representatives and others vs. Lehna Singh (dead) by Legal Representatives, (2019) 7 SCC 641** has held as follows:

"15.1 As observed hereinabove and as held by this Court in a catena of decisions and even as per Section 100 CPC, the jurisdiction of the High Court to entertain the second appeal under Section 100 CPC is confined only to such appeals which involve a substantial question of law. On going through the substantial questions of law framed by the High Court, we are of the opinion that the question of law framed by the High Court



while deciding the second appeal, cannot be said to be substantial questions of law at all. The substantial questions of law framed by the High Court are as under :

“(i) Whether the Appellate Court can reverse the findings recorded by the learned trial court without advertng to the specific finding of the trial Court?

(ii) Whether the judgment passed by the learned lower Appellate Court is perverse and outcome of misreading of evidence?”

The aforesaid cannot be said to be substantial questions of law at all. In the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside. At this stage, decision of this Court in the case of *Madamanchi Ramappa v. Muthaluru Bojappa*, AIR 1963 SC 1633, is required to be referred to.

Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappraise the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of *Narayanan Rajendran v. Lekshmy Sarojini*, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100



of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.

23. No other point was raised by the learned counsel for the parties.

24. The learned first appellate Court has rightly appreciated the Point in controversy after considering the oral as well as documentary evidence placed on record. No question of law much less substantial question of law arises in the present case.

32. In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

(Romesh Verma)
Judge

21st April, 2026.
(vt)