

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 310 of 2015.

Reserved on : 22/11/2016

Date of decision: 02/12/2016

Subhash Chand

..Appellant/defendant.

Versus

Bhim Sen and another.

..Respondents/plaintiffs.

Coram

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

Whether approved for reporting?¹. yes.

For the appellant: Mr. Anil God, Advocate.

For the respondent: Mr. Ajay Sharma, Advocate.

Sureshwar Thakur, J:

1. The instant appeal stands directed against the impugned judgement and decree of the learned Additional District Judge (III), Kangra at Dharamshala, Circuit Court at Baijnath, District Kangra, H.P., whereby she affirmed the rendition of the learned Civil Judge (Jr. Division), Baijnath, District Kangra, Himachal Pradesh. The defendant standing aggrieved by the concurrently recorded renditions of both the learned Courts

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

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below, concert through the instant appeal constituted before this Court, to beget reversal of the judgements and decrees of both the Courts below.

2. The facts necessary for rendering a decision in the instant appeal are that plaintiffs sought declaration to the effect that they are owners of land comprising Khata No. 204, Khatauni No. 275, Khasra No. 223, measuring 0-11-77 hectares, situated at Mohal Chogan, Mouza Bir, Tehsil Baijnath, District Kangra, as per Jamabandi for the year 2007-08 (hereinafter referred to as the suit land) and the entry showing the defendant as owner is wrong, illegal, null and void and not binding upon them as the same were recorded on the basis of mutation No. 486 of 18.08.1999 whereby he was declared to be owner under the H.P.Tenancy and Land Reforms Act. It is contended that defendant was never inducted as tenant over the suit land by the plaintiffs nor their predecessors. Hence, the defendant be restrained by way of permanent prohibitory injunction. Further it is contended that the suit land was purchased by the plaintiffs from father of the defendant to the extent of 333310/63906760 share from suit land out of total land measuring 05-54-59 hectares. It is contended that plaintiffs were living in Punjab due to his service and during settlement joint land was partitioned though they were never summoned and partition was

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conducted behind their back in which Khasra No. 467 was given to the plaintiffs and they were put in possession which is also evident from the jamabandi. Later on in 1994-95 when Iatemaal was done and said Khasra No. 467 was given new Khasra No. 223 and the defendant was wrongly shown as tenant and on the basis of this wrong entry defendant got mutation No. 486 attested conferring proprietary rights under H.P.Tenancy and Land Reforms Act. It is contended that this fact came to their knowledge in the month of November, 2009. Thereafter, they asked the defendant to get the wrong entries corrected in the revenue record. He paid no heed to their request. Hence, the present suit.

3. The suit was contested by defendant. He filed written statement, wherein he raised preliminary objections about maintainability of the suit and cause of action, limitation, estoppel and locus standi. On merits, it is averred that he is coming in possession of the suit land even prior to 1971. However, his name was got deleted by the plaintiffs in the revenue record but he continued with possession over the suit land without any interruption. Thereafter, consolidation took place in the village in the year 1994-95 and on his application of 25.11.1995 he was recorded as gair marusi and he has been paying lagan in the shape of galla batai to the plaintiff and thereafter he was conferred with

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proprietary rights under H.P.Tenancy and Land Reforms Act and mutation No. 486 dated 8.8.1999 was also attested in this behalf and as such he has now become absolute owner of the suit land. However, the factum of purchasing the land from his father is admitted. It is also averred that the plaintiff No.1 and father of plaintiff No.2 themselves inducted him as tenant over the suit land since 1971 and as such he has rightly been recorded as tenant in the revenue record, as such, the question of taking forcible possession of the suit land does not arise at all. All other contents of the plaint are denied and a prayer is made for dismissal of the suit.

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

1. Whether the plaintiffs are owners of the suit land comprised in Khata No. 204 min, Khatauni No. 275, Khasra No.223 leand measuring 0-11-77 hecets situated at Mohal Chogan, Mauza Bir, Tehsil Baijnath, District Kangra, H.P., as prayed for? **OPP.**
2. Whether the revenue entry showing the defendant as owner in possession of suit land are illegal, null and void and is not binding upon to the plaintiffs, as alleged for? **OPP.**
- 2A. Whether the entry showing the defendant tenant over the suit land is made at the back of the plaintiffs and as such is wrong, null and void. **OPP.**

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3. Whether mutation No. 486 dated 18.08.1999 showing the defendant as tenant over the suit land is wrong, null and void, as alleged? **OPP.**
4. Whether the plaintiff is entitled to the relief of permanent and prohibitory injunction, as prayed for?
5. Whether the plaintiff is entitled for the possession of the suit land, as prayed for? **OPP.**
6. Whether the defendant was conferred with proprietary rights under Section 104(3) as per H.P.Tenancy and Land Reforms Act, as alleged? **OPD.**
7. Whether the suit of the plaintiff is not maintainable in the present form? **OPD.**
8. Whether the plaintiff has no cause of action against the defendant? **OPD.**
9. Whether the plaintiff is estopped by his act and conduct to file the present suit? **OpD.**
10. Whether the plaintiff has no locus standi to sue? **OPD.**
11. Whether the suit is barred by limitation? **OPD.**
12. Relief.

5. On an appraisal of the evidence, adduced before the learned trial Court, the learned trial Court decreed the suit of the plaintiffs besides the learned Additional District Judge, affirmed the findings of the learned trial Court.

6. Now the defendant/appellant herein has instituted before this Court the instant Regular Second Appeal wherein he assails the findings recorded in its impugned judgment and decree by

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the learned first Appellate Court. When the appeal came up for admission on 8.7.2015, this Court admitted the appeal on the hereinafter extracted substantial questions of law:-

- "1. Whether both the learned Courts below failed to appreciate that the suit filed by the respondent/plaintiff is barred by limitation?
2. Whether the learned trial Court erred in allowing application under Order 14 Rule 5 CPC and issue No. 3 was amended and issue 2(A) was framed additionally without amending the original suit?
3. Whether the Court below has misinterpreted the oral as well as documentary evidence placed on record?
4. Whether the learned courts below has erred in disbelieving the defence as set up by the present appellant that by virtue of Section 104(3) of the H.P.Tenancy and Land Reforms Act, he has become owner of said land?
5. Whether the adverse inference was received to be inferred against the defendant, if the respondents/plaintiffs have failed to appear at the time of correction of revenue record and the Ld. Courts below have wrongly presumed that same is without jurisdiction and appellant/defendant was recorded as "Gair Marusi"?
6. Whether the learned trial Court had jurisdiction to entertain the suit filed by the present respondents/plaintiffs?

Substantial questions of law.

7. Evidently, the plaintiffs purchased the suit land in the year 1966 from the predecessor in interest of the defendant whereupon they acquired

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co-ownership alongwith them qua the suit land. However, though with the plaintiffs' acquiring title qua the suit land as co-owners thereon alongwith the defendant, yet the latter on the anvil of revenue entries purportedly depicting him to be holding tenancie(s) upon the suit land hence canvassed qua his by statutory operation of the mandate of Section 104(3) of H.P.Tenancy and Land Reforms Act acquiring absolute title thereto. With the factum of the plaintiffs' holding co-ownership qua the suit land alongwith the defendant thereupon they alongwith the defendant held unity of title besides community of possession with him qua every inch of land borne thereon. The espousal of the defendant qua his holding possession of the suit land as a tenant under the plaintiffs' would be erosive of the salient cannon embodying the principle of joint tenancy wherewithin a fiat aforesaid stands encapsulated. Even if assumingly the aforesaid salient nuance embodying the principle of joint tenancy may stand eroded by

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categorical depictions emanating from the apposite revenue records personificatory qua one of the co-owners qua his rights as a co-owner in the undivided suit land inducting the other co-owner(s) as tenant(s) thereon personifications whereof would erupt from the apposite revenue records reflecting qua one of the co-owners vis-à-vis the other co-owner(s)' share holding it as a tenant on payment of rent in cash or in kind whereupon a construction would stand erected qua the apposite relationship of landlord and tenant standing established inter se co-owners'.

8. In the endeavour aforesaid the defendant has canvassed qua his tendering 'galla batai' to the plaintiff through Shesh Ram, tendering whereof stands espoused to hence connote qua its sustaining the factum of an apposite relationship of a landlord and tenant coming into existence inter se the parties at contest hereat yet with the defendant not adducing any receipt qua his tendering 'galla batai' to the plaintiffs through Shesh Ram does belittle his

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espousal qua his thereupon holding the share of the plaintiffs in the suit land as a tenant under them.

9. Be that as it may, the defendant had contended qua with an apposite affirmative order standing recorded vis-à-vis him on his application comprised in Ext.DX whereupon mutation No. 486 of 18.08.1999 stood attested in sequel whereto the apposite substitution(s) in the relevant records stood effected qua him rendering him hence to be construable to be holding the share of the plaintiffs' in the joint suit land as a tenant under them whereupon he espouses qua statutory vestment of title standing automatically bestowed upon him qua the suit land. However, the aforesaid submission would hold vigour only when the revenue officer concerned, preceding his recording the apposite order on the application of the defendant comprised in Ext.DX, his eliciting the participation of the plaintiffs'. However, evidently with the order pronounced upon Ext.DX remaining unpreceded by

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the revenue officer concerned eliciting the participation of the plaintiffs' in the relevant proceedings hence it is construable to stand pronounced behind the back of the plaintiffs also thereupon the plaintiffs are to be construed to stand condemned unheard whereupon an inference is erectable qua in the making of the apposite order recorded by the revenue officer concerned on the application of the defendant comprised in Ext.DX, it standing stained with a vice of its infracting the rule of audi alteram partem whereupon no sanctity is imputable thereto.

10. For reasons aforesaid this Court concludes with aplomb of the judgements and decrees of both the Courts below standing sequelled by theirs appraising the entire evidence on record in a wholesome and harmonious manner apart therefrom it is obvious that the analysis of material on record by the learned Courts below not suffering from any perversity or absurdity of mis-appreciation and non appreciation of

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evidence on record, rather they have aptly appreciated the material available on record. I find no merit in this appeal, which is accordingly dismissed and the concurrently recorded judgments and decrees of both the Courts below are maintained and affirmed. Substantial questions of law stand answered against the defendant. Decree sheet be prepared accordingly. All pending applications stand disposed of accordingly. No costs.

2nd December, 2016.
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(Sureshwar Thakur)
Judge.