



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

FAO No. 31 of 2024

Reserved on: 17.11.2025

Date of decision: 27.11.2025

Daulat Ram & others.

.....Appellants.

Versus

Ashok Kumar.

.....Respondent.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellants: Mr. J.R. Poswal, Advocate.

For the respondent: Mr. Mohit Jaitak, Advocate
(through Video Conferencing).

Sushil Kukreja, Judge.

The instant appeal is maintained by the appellants, who were plaintiffs before the learned Trial Court (hereinafter referred to as “the plaintiffs”) under Order 43 Rule-1 (U) read with Section 104 CPC against the judgment dated 26.08.2023, passed by learned Additional District Judge-II, Una, District Una, H.P., whereby the appeal preferred by the respondent herein, who was defendant before the learned Trial Court (hereinafter referred to as “the

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



defendant”) was allowed and the judgment and decree passed by learned Senior Civil Judge, Una, District Una, H.P., was set aside and the suit was remanded back to the learned Trial Court for decision afresh. The appellants prayed that the instant appeal be allowed and impugned judgment, dated 26.08.2023, in Civil Appeal No. 18-XII-22/2021, passed by learned Additional District Judge-II, Una, District Una, H.P., be quashed and set-aside.

2(a). The case of the plaintiffs is that they are owners-in-possession of the land comprised in Khewat No. 1696, khatauni No. 2130, khasras No. 7127 and 7126, measuring 21 kanal 02 marla and they had mortgaged 1/4th share out of this land to Tilak Raj and Ravi Kumar (who include their predecessors-in-interest) and remaining 3/4th share continued in possession of the plaintiffs as owners. It has been averred that a petition seeking redemption of the aforesaid mortgaged land was pending in the Court of learned Sub Divisional Officer (Civil), Una, exercising the powers of Collector.

2(b). The plaintiffs averred that Lakhbir Singh and Tarsem etc. (who include their predecessors-in-interest), in



connivance with the Revenue Officials and mortgagees at the back of the plaintiffs fraudulently procured fictitious entries in possessory column in their favour showing them as Gair Marusi tenants under the mortgagees in the revenue record with intention to grab the aforesaid land by taking undue benefit of the fact that the plaintiff had been residing for the last 35-40 years in village Sanjhot, which was at a distance of about 25 kilometers from village Badhera, where the suit land is situated for the last 35-40 years. As per the plaintiffs, Lakhbir Singh and Tarsem etc. were never inducted as Gair Marusi tenants by the plaintiffs. The defendants had forcibly taken possession of the suit land about one and half years back, prior to filing of the suit by them, and raised construction of three rooms, veranda, kitchen, bathroom and installed hand pump etc. on the same by taking undue benefit of the absence of the plaintiffs without their consent. As per the plaintiffs, the possession of the defendant over the suit land was illegal and only that of a tress-passer. The defendant also threatened the plaintiffs to further encroach upon khasra No. 7127. Lastly, the plaintiffs prayed that their suit for possession be allowed.



2(c). The defendant resisted the claim of the plaintiffs by filing a written statement raising preliminary objections, viz., cause of action, estoppel, maintainability, locus standi, res-judicata, limitation etc. On merits, it was averred that the suit and remaining land mentioned in the plaint had been coming in possession of Bakshi Ram, Tarsem and Chanan sons of late Shri Nathu, as tenants on payment of Chokota under the plaintiffs and recorded mortgagees. Bakshi Ram etc. had become owners of the suit land under the Himachal Pradesh Tenancy and Land Reforms Act, 1972. As per the defendant, the plaintiffs had knowledge qua the possession of the defendant and they were seeing and admitting the possession of the recorded tenants, but they never objected to the same. The plaintiffs preferred counter claim No. 103/01/2020, in Civil Suit RBT No. 263/13/18, seeking relief of possession from the above stated tenants, but the same was dismissed on 30.09.2020 by learned Senior Civil Judge, Una.

2(d). The defendant also averred that Bakshi had entered into an agreement to sell on 12.03.1997 with Usha Devi to sell 1 kanal of land from khasra No. 7127 for a sum



of Rs.25,000/- vide written agreement and Bakshi again entered into an agreement to sell 10 marlas of land with Smt. Satya Devi for a sum of Rs.11,000. Smt. Satya Devi raised abadi upon this property and she entered into an agreement to sell with defendant the aforesaid 10 marlas of land, vide agreement dated 10.03.2003 for a sum of Rs.1,10,000/-. Lakhbir Singh son of Bakshi Ram also entered into an agreement to sell 10 marlas of land for a sum of Rs.25,000/- from same khasra No. 7127, vide written agreement, dated 19.04.2003. The defendants also averred that lakhbir Singh also entered into an agreement to sell with Shri Tek Chand to sell 1 kanal 10 marlas of land for a sum of Rs.75,000/- and subsequently this Tek Chand entered into an agreement to sell of aforesaid 1 kanal 10 marlas of land with the defendant for a sale consideration of Rs.1,30,000/-. Smt. Usha Devi also sold land measuring 1 kanal for a sum of Rs.4,85,000/- to defendant and defendant paid all consideration amounts referred to above and was put into possession of the same by the proposed vendors. Lakhbir Singh, vide additional agreement dated 02.01.2010 undertook to execute sale deed in all the aforesaid agreements, when proprietary rights



would be conferred upon him and defendant has been coming in peaceful possession of lands and abadies thereon since the time of these agreements and as such there is no possibility of hurling threats to the plaintiffs as alleged. As per the defendant, site plan filed by the plaintiffs was false, frivolous and against the spot position. Lastly, prayer for dismissal of the suit was made.

3. The plaintiffs, by way of filing replication, refuted the claim of the defendants and reiterated their claim.

4. On the basis of the pleadings of the parties, the learned Trial Court framed following issue on 31.01.2011 and 11.01.2021:

- “1. Whether the plaintiffs are entitled for the relief of possession, as prayed for? OPP**
- 2. Whether the plaintiffs are entitled for the relief of permanent injunction, as prayed for? OPP**
- 3. Whether the plaintiffs have no cause of action to file the present suit? OPD**
- 4. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD**
- 5. Whether the suit is not maintainable in the present form? OPD**
- 6. Whether the suit is hit by Section 10 of CPC? OPD**
- 7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD**
- 8. Whether the suit is barred by the**



provisions of Limitation Act?

8-A. *Whether the suit is barred by principle of res judicata, as claimed?*

OPD

9. *Relief.*”

5. After deciding issue No. 1 in favour of the plaintiffs, issue No. 2 against the plaintiffs, issues No. 3 to 5 and 7, 8 and 8-A against the defendant and issue No. 6 infructuous, the suit of the plaintiffs was decreed.

6. The defendant, being dissatisfied, preferred an appeal before the learned Lower Appellate Court. During the pendency of the appeal, the appellant had also filed an application under Order 41 Rule 27 CPC seeking leave to produce on record certified copy of the judgment, dated 28.11.2022, passed by the Court of learned Additional District Judge-II, Una, District Una, H.P., in Civil Appeal No. 19-XIII-2020. The said appeal of the defendant and application under Order 41 Rule 27 CPC, which was preferred by the defendant, were allowed and the impugned judgment and decree of the learned Trial Court were set-aside and the suit was remanded back to the learned Trial Court for decision afresh and that too after taking into consideration certified copy of judgment, dated 28.11.2022, passed in Civil Appeal



CIS No. 54/2020 (19-XIII-2020), vide which judgment dated 30.09.2020, passed in Civil Suit RBT No. 263/13/2008, Ex. PX, and made basis of impugned judgment and decree, has been set-aside.

7. Feeling dissatisfied, the appellants (plaintiffs) preferred the instant appeal against impugned judgment dated 26.08.2023, passed by learned Lower Appellate Court, whereby the appeal preferred by the defendant was allowed and the judgment and decree of the learned Trial Court was set-aside and the suit was remanded back to the learned Trial Court for decision afresh.

8. I have heard the learned counsel for the appellants, learned Counsel for the respondent (through video conferencing) and carefully examined the entire record.

9. At the outset, it may be pertinent to mention here that at the time of final decision of the appeal, the learned Lower Appellate Court allowed the application under Order 41 Rule 27 CPC filed by the defendant (respondent herein) seeking leave to produce on record certified copy of the judgment, dated 28.11.2022, passed by learned Addl. District



Judge-II, Una, in Civil Appeal CIS No. 54/2020, whereby the judgment and decree, dated 30.09.2020, passed in Civil Suit RBT No. 263/13/2008, titled as Lakhbir Singh etc. vs. Hazara Singh etc., Ex. PX, has been set-aside.

10. The learned counsel for the appellants contended that wholesale remand is not permissible and the learned Lower Appellate Court had gravely erred while remanding the case back to the learned Trial Court for decision afresh. He further contended that the learned Lower Appellate court should have decided the case itself instead of remanding the case back to the learned Trial Court. He also placed reliance on decisions of co-ordinate Benches, rendered in ***Gian Chand Khantana & others vs. Inderjit Chohdha, 2002 STPL 8686 HP, Jabbar Cingh vs. Shanti Saroop, 2006 STPL 17475 HP and Ram Saroop vs. Trilok Singh & others, 2007 STPL 14118 HP.***

11. Conversely, the learned counsel for the respondent contended that the learned Lower Appellate Court had rightly remanded the matter to the learned Trial Court and no interference is required in the impugned judgment passed by the learned Lower Appellate Court.



12. After carefully examining the material available on record, it is revealed that the plaintiffs have sought possession of the suit land from the defendant claiming that 1/4th share in land comprised in khasras No. 7127 and 7126, measuring 21 kanals 2 marlas was mortgaged by their predecessor-in-interest in favour of predecessor-in-interest of one Tilak Raj and Ravi etc. and remaining 3/4th share was coming in their possession and that Lakhbir Singh and Tarsem Singh etc.(which include their predecessor-in-interest), who include their predecessor-in-interest in connivance with revenue officials and mortgagees at the back of plaintiffs (which include their predecessor-in-interest), which include their predecessor-in-interest in a clandestine manner to grab the land of plaintiffs got procured fictitious entry in the column of possession in their names as *Gair Marusi* tenants under the mortgagees in the record of rights and that they had preferred a petition for redemption of mortgage before learned SDO(C) Una exercising the powers of Collector Una, which was allowed during the pendency of lis and 1/4th share mortgaged by their predecessor-in-interest was ordered to be redeemed and that the defendant is in



unauthorized possession of the suit land as the same has been taken by him forcibly one and half year back of the institution of the suit and recently raised construction of pucca house, tin posh and cattle shed in absence of the plaintiff.

13. On the contrary, the case of the defendant, in his written statement, is that he is claiming origin of his possession of the suit land through agreements to sell, dated 12.03.1997, 21.04.1997, 10.03.2003, 19.04.2003, 25.05.2007 and 14.08.2007 executed between various persons and him and these agreements having been authenticated by Shri Lakhbir Singh s/o Bakshi Ram vide a separate agreement dated 02.01.2010. To be more specific, the status of Bakshi Ram, the predecessor-in-interest of Lakhbir Singh was owner as he was earlier *gair marusi* tenant qua the subject matter of the suit land and he has been conferred proprietary rights of the same by operation of law and the plaintiffs had been left without any interest in the suit land and as such they cannot maintain this suit. He has also claimed that non-execution of sale deed in favour of defendant by the vendors was due to the fact that mutation



qua conferment of the proprietary rights was not attested in favour of Bakshi Ram, the predecessor-in-interest had paid entire sale consideration in respect of all agreements at the time of execution of these agreements.

14. However, only on the strength of the judgment dated 30.09.2020, titled as Lakhbir Singh etc. vs. Hazara Singh etc., Ex. PX, the learned Trial Court had decreed the suit only on the strength of the aforesaid judgment by observing that the judgment dated 30.09.2020, Ex. PX, involved the question of status of Bakshi, Chanan Singh and Tarsem as tenants qua khasras No. 7127 and 7126 and that those persons are not *gair marusi* under the plaintiffs (landlords).

15. The perusal of record reveals that the learned Trial Court has disposed of the suit without recording its independent findings on issue No. 1, which is the main issue relating to the title of the parties to the suit land and had ignored the pleadings of the parties as well as the evidence adduced on record and had passed the judgment only on the basis of judgment dated 30.09.2020, Ex. PX, and straightway arrived at a conclusion that the status of the tenant/vendor,



from whom the defendant had purchased the suit land, was of a trespasser in the suit land and therefore, he could not have transferred the suit land to the defendant and the defendant was in unauthorized possession of the suit land and the plaintiffs are entitled to regain possession thereof from her. However, as observed earlier, the aforesaid judgment, Ex. PX, has admittedly been set-aside by the Court of learned Additional District Judge-II, Una, District Una, H.P., in appeal. Since the learned Trial Court had based its impugned judgment and decree only on the judgment, Ex. PX, which has been set-aside by the learned Appellate Court, the learned Lower Appellate Court had rightly remanded the case back to the learned Trial Court for decision afresh.

16. The judgments relied upon by the learned Counsel for the Appellant are not applicable to the facts and circumstances of the instant case, as in the instant case, the learned Trial Court had failed to give independent findings on issue No. 1 which is the main issue relating to the title of the parties to the suit land and had ignored the pleadings of the parties as well as the oral & documentary evidence adduced



on record, but simply decided the case on the basis of judgment, Ex. PX, which has been set-aside in appeal.

17. In view of what has been discussed hereinabove, the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed. Pending application(s), if any, shall also stand(s) disposed of.

18. Interim order, dated 12.01.2024, stands vacated. The parties are directed to appear before the learned Trial Court on **29.12.2025**.

19. Learned Registrar (Judicial) shall ensure that the entire record be remitted to the learned Reference Court forthwith.

(**Sushil Kukreja**)
Judge

27th November, 2025
(virender)