

C.A.No. 5919 OF 1998

ITEM No.108

Court No. 9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 5919 of 1998

STATE OF HIMACHAL PRADESH Appellant (s)

VERSUS

BIJA RAM & ANR.Respondent (s)

(With office report)

Date : 10/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. J.S. Attri,Adv.

For Respondent (s)Mr. A.V. Palli,Adv.
Mr. E.C. Agrawala,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties for a while.

The civil appeal is allowed.

No costs.

[T.I. Rajput] [Kanwal Singh]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5919 OF 1998

State of Himachal Pradesh ...Appellant(s)

Versus

Bija Ram & Anr. ...Respondent(s)

O R D E R

This appeal is filed by the State of Himachal Pradesh calling in question the validity and correctness of the judgement and decree passed by the High Court in a second appeal. The respondents herein filed a suit for declaration and permanent injunction. The trial court, after trial, in the light of the evidence placed before it, decreed the suit. The State filed the first appeal, aggrieved by the decree passed by the trial court, which appeal was allowed. The plaintiff filed the second appeal before the High Court. The High Court, by the impugned judgement, allowed the second appeal; in the result, the decree of the trial court was restored. The learned counsel for the appellant urged that the impugned judgement cannot be sustained on the short ground that it was disposed of without formulating or considering any substantial question(s) of law that arose for consideration between the parties, as mandatorily required under Section 100 of the Code of Civil Procedure, 1908. The

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learned counsel for the respondents was not in a position to resist this submission, having regard to the decisions of this Court touching this point. However, he added that the lands in occupation of the respondents are allotted by the State of Himachal Pradesh in view of the subsequent amendment in the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974. The learned counsel for the appellant states that he has no information as to whether any notification is issued covering the allotment of lands in favour of the respondents. In the view we are proposing to take, it is not necessary for us to deal with regard to the allotment of the lands said to have been made in favour of the respondents.

In the light of the submissions made by the learned counsel for the parties and in view of the settled legal position, we have no hesitation in holding that the impugned judgement cannot be sustained as the second appeal has been disposed of without formulating and considering any subsequent question(s) of law, if any, that arose for consideration between the parties. Hence, this appeal is allowed, the impugned judgement is set aside and the second appeal is remitted to the High Court for formulating any substantial question or questions of law if arise for consideration between the parties and to dispose of the second appeal.

We, however, make it clear that the status quo existing as of today over the lands in question shall be maintained until the disposal of the second appeal by the High Court.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[Dr. AR. LAKSHMANAN]

New Delhi,
February 10, 2004.