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C.A.No. 4257 OF 1999  
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ITEM NO. 101 P.H. COURT NO. 6 SECTION XIV

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4257 OF 1999@@  
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Manjit Singh and Ors. ... Appellant (s)  
Vs.

Shanti Devi and Anr. ... Respondent (s)

( With office report )

Date: 30-08-2001 This/These matter(s) was/were called  
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For appellant (s) Mr. Avadh Bihari Rohtagi, Sr.adv.  
Mr. HM Singh, adv.  
Mr. Anil Hooda, adv.

For respondent (s) Mr. MR Sharma, Sr.adv.  
Ms. Anjana Sharma, adv.  
Mr. PN Puri, adv.

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

.....L.....I.....T.....T.....T.....T.....J  
The appeal is allowed with costs.

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(Alka Dudeja)  
Court Master

(S. Krishnan)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4257 OF 1999

Manjit Singh and others

..

Appellants

-vs-

Shanti Devi and another

..

Respondents

O R D E R

Unit No. 142 comprising Khasra Nos. 2411 to 2417, 2428 and 2429 and Unit No. 140 comprising Khasra Nos. 2405, 2406, 2408, 2409, 2410, 2418, 2419 and 2420 situate in the town of Dharmasala were held to be the evacuee property. The Custodian Department, therefore, sold Unit No. 142 to Amar Singh, the husband of the respondent No. 1 plaintiff, whereas Unit No. 140 was sold to Roop Singh, predecessor-in-interest of the defendant-appellants herein, through registered conveyance deeds.

In the year 1968, Roop Singh, the predecessor-in-interest of the appellants herein brought a suit in the Court of Sub-Judge, Dharmasala for declaration that an area measuring 390 sq. feet is the part of Unit No. 140. In the said suit, the husband of plaintiff-respondent herein was impleaded as defendant. The trial court did not find title of predecessor-in-interest of the appellants in the said land. Consequently, the suit was dismissed. The appeal preferred before the first appellate court was dismissed and the second appeal filed before the High Court also met with the same fate. Thereafter, the respondent herein brought a suit for declaration that she has a title in the land measuring 86.90 sq. mtrs. and also for permanent injunction. Alternatively, it was prayed that in case the plaintiff-respondent is not found in possession, the possession may be delivered to her. In the said suit, the appellants were impleaded as defendants. The defendant-appellants filed a written statement wherein it was stated that this suit is barred by the principle of res judicata as in the earlier suit brought by the predecessor-in-interest, it was held that neither the plaintiff nor the defendants are the owners of the land in dispute. The trial court found that the plaintiff neither has any title in the land nor she is in possession. However, the trial court held that the suit is not barred by the principle of res judicata. In that view of the matter, the suit came to be dismissed. The plaintiff-respondents thereafter preferred an appeal before the first appellate court. The first appellate court taking a curious view of the matter, allowed the appeal. It was held that since in the earlier suit the defendants were found having no title to the land or in possession over the land and, therefore, the plaintiff-respondent has a title to the land. However, in the same breath the first appellate court held that the suit is not barred by the principle of res judicata. In that view of the matter, the decree of the trial court was set aside and the suit stood decreed. The appellants thereafter preferred a second appeal before the High Court. Before the High Court two substantial questions of law were framed. One of the questions was whether the plaintiff-respondent has possessory title in the land and the second question was whether the suit brought by the plaintiff-respondent was barred by the principle of res judicata. The High Court was of the view that since the plaintiff has possessory title in the land, therefore, she is entitled to relief of recovery of possession. So far as the second question is concerned, the High Court held that the suit is not barred by the principle of res judicata. In that view of the matter the second appeal was dismissed. It is against the said judgment of the High Court, the defendant-appellants are in appeal before us.

Shri A.B. Rohtagi, learned senior counsel, appearing for the appellants urged that the view taken by the court below that since the plaintiff-respondent has possessory title in the land and, therefore, entitled to recovery of possession, is erroneous. He further contended that no plea of dispossession having been taken in the plaint, the plaintiff-respondent was not entitled to any relief on the basis of the possessory title. However, learned counsel for the plaintiff-respondent urged that since the defendants themselves have admitted that the plaintiff-respondent was dispossessed as

far back in January, 1982, therefore, the plaintiff-respondent was entitled to the relief of recovery of possession on the basis of possessory title in the land. After we heard the matter, we find substance in the argument of Shri Rohtagi. For obtaining relief of recovery of possession on the basis of possessory title in the land, the plaintiff was required to plead and prove that she was in possession over the land and was subsequently dispossessed. Unless the plaintiff avers in the plaint and proves that she has been dispossessed subsequently, she was not entitled to relief of recovery of possession on the basis of possessory title. In the present case, in the absence of any plea of dispossession by the plaintiff, the suit could not have been decreed on the plea of possessory title in the land.

For these reasons, the appeal deserves to be allowed. We, accordingly, set aside the judgment under challenge.

The appeal is allowed with costs. The decree of the trial court is restored.

& & & & & & & ..J.  
(V. N. Khare)

& & & & & & & ..J.  
(B. N. Agrawal)

New Delhi;  
30 August, 2001