

CASE NO.:
Appeal (civil) 1304 of 2002

PETITIONER:
Bhagat (D) by L.Rs

RESPONDENT:
Sher Singh (D) by L.Rs

DATE OF JUDGMENT: 08/04/2008

BENCH:
Dr. Arijit Pasayat & P. Sathasivam

JUDGMENT:
JUDGMENT
NON-REPORTABLE

CIVIL APPEAL NO. 1304 OF 2002

P. Sathasivam, J.

1) This appeal is directed against the judgment and final order dated 12.08.1999 of the High Court of Himachal Pradesh at Shimla in R.S.A. No. 267 of 1993 whereby the High Court modified the decree and judgment dated 1.05.1993 passed by the District Judge, Kangra at Dharamshala.

2) The facts which are necessary for the disposal of this appeal are as under:

The dispute between the parties is in respect of land comprising of Khasra Nos. 404, 415 and 465 measuring 1.10.73 Hectares in Mohal and Mauza Bhatehad, Tehsil Dharamshala, District Kangra. On 19.7.1990, the original plaintiff, predecessors of respondents herein filed a suit for declaration that the entries with regard to Khasra Nos. 404, 415 and 465 made in the revenue record are not correct as wrongly shown the defendants/appellants herein in the column of owners and prayed for possession in alternative. The defendants/appellants filed written statement and opposed the suit on the ground that civil court has no jurisdiction to adjudicate any question with regard to conferment of proprietary right in respect of the land in dispute, that the suit is barred by limitation, and that the defendants are in possession for the last 60-70 years and earlier his predecessor-in-interest were in possession of the suit land. By judgment and decree dated 29.02.1992, the suit was dismissed being barred by limitation. Challenging the same, the plaintiff/respondents filed C.A. No.61 of 1992 on the file of the District Judge, Kangra at Dharamshala. The District Judge, by order dated 01.05.1993, dismissed the appeal with some modification passed by the trial Court. Aggrieved by the said order, the respondents filed R.S.A. No. 267 of 1993 before the High Court of Himachal Pradesh. The High Court by the impugned order partly allowed the appeal holding that the plaintiffs are in possession in part of the land comprising Khasra Nos. 415 and 465 and dismissed the appeal as well as the suit so far as Khasra No. 404 is concerned. Against the said order, the appellants have filed this appeal by way of special leave.

3) Heard Mr. Dhruv Mehta, learned counsel for the appellants and Mr. Himinder Lal, learned counsel for the respondents.

4) The subject-matter of the dispute relates to Khasra Nos.

404, 415 and 465. Based on the oral and documentary evidence, more specifically revenue records produced before the trial Court, it has come to the conclusion that Khasra No. 404 has been in possession of the original defendant and Khasra Nos. 415 and 465 have been in possession of the original plaintiff. The High Court, based on the finding of fact arrived at by the trial Court, that the original plaintiff was not in possession of Khasra No. 404 and had no knowledge about the revenue entries, dismissed his suit insofar as Khasra No. 404 is concerned. On the other hand, the other two Khasra Nos. 415 and 465 are concerned, the High Court after noting that the original plaintiff has been in possession and cause of action accrued to him when the original defendant extended threat of dispossession, which is within the limitation, allowed the second appeal in part. Inasmuch as the High Court arrived at such a conclusion based on the factual finding of the trial Court which, in turn, relied on the oral and documentary evidence as well as entries in the revenue records, which being the position, in the absence of any other material, we do not find any justifiable ground to interfere with the conclusion of the High Court.

5) In the light of the above conclusion, the appeal fails and the same is dismissed. However, there shall be no order as to costs.