

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 120 of 2016

Date of decision: 22.11.2025.

Tirth Ram

...Appellant

Versus

Tek Chand & others

...Respondents

*Coram:****The Hon'ble Mr. Justice Satyen Vaidya, Judge.****Whether approved for reporting?¹*

For the appellant:

Mr. Vijay Chaudhary, Advocate.

For the respondents:

Mr. Ashwani K. Sharma,
Advocate, for respondent No.1.**Satyen Vaidya, Judge (oral):**

This Regular Second Appeal has been filed against the judgment and decree dated 16.3.2015, passed by the learned District Judge, Mandi in Civil Appeal No. 16 of 2014, whereby the judgment and decree dated 19.5.2014, passed by the learned Civil Judge (Sr. Division), Mandi, District Mandi, H.P. in Civil Suit No. 61 of 2010, has been affirmed.

2. Civil Suit No. 61 of 2010 was filed by the respondent/plaintiff herein against the appellant/defendants, seeking decree of permanent prohibitory

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

injunction to restrain the defendants from interfering and cutting or removing grass from the land comprised in khata khatauni No. 79/87, khasra No. 199, measuring 0-17-1 bighas and khasra No. 201, measuring 0-06-9 bighas situated in Mauja Sidhyani, Mohal Dahanu, Tehsil Sadar, District Mandi, H.P. (for short, the “suit land”).

3. It was alleged that the appellant/defendants were owners of the adjoining land and were creating boundary dispute unnecessarily despite the fact that the respondent/plaintiff had obtained demarcation of the suit land on 10.6.2010 in the presence of appellant/defendants and boundary pillars had been affixed.

4. It was further the case of the respondent/plaintiff that the appellant/defendants had illegally cut and removed the grass from the suit land on 10.9.2010, without his consent and permission.

5. The appellant/defendants filed written statement and came up with the plea that the suit land was in their possession since long. It was alleged that the defendants were in possession of the suit land since 1996 and before that their father used to hold the possession of

the suit land. The possession on the suit land was claimed by the defendants to be continuous, uninterrupted and hostile. In this manner, the defendants had claimed that they had perfected the title over the suit land by way of adverse possession.

6. The learned trial Court had framed the following issues:-

- “1. Whether the defendants have interfered in the suit land by way of cutting grass, as alleged? OPP
2. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form, as alleged? OPD
4. Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD
5. Whether the plaintiff is not actual and physical possession of the suit land, as alleged? OPD
6. Whether the defendants are in peaceful, continuous and uninterrupted possession of the suit land, as alleged? OPD
7. Relief.”

Issues No. 1 and 2 were answered in affirmative whereas, all other issues were answered in negative. The suit of the respondent/plaintiff was decreed. A decree of permanent prohibitory injunction was passed against the

appellant/defendants, restraining them from causing any interference and from cutting or removing grass from the suit land.

7. Aggrieved against the judgment and decree passed by the learned trial Court, the appellant/defendants preferred appeal under Section 96 of the Code before the learned District Judge, Mandi but have remained unsuccessful, as their appeal has been dismissed vide impugned judgment and decree, hence this appeal.

8. The instant appeal was admitted on 19.3.2016 on the following substantial questions of law:-

- “1. Whether the learned Courts below erred in not appreciating the oral as well as documentary evidence adduced by the appellant more especially the written statement and statement of DW-1 Tirath Ram which caused substantial miscarriage of justice?”*
- 2. Whether the learned Courts below erred in relying upon the demarcation report conducted by the Kanungo to the disadvantage of the appellant?”*

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. Indisputably, the respondent/plaintiff was recorded as owner in possession of the suit land in the

records of rights. The entries in records of rights showing the respondent/plaintiff as owner in possession of the suit land were consistent and without any break. Thus, by attaching presumption of truth to the records of rights maintained consistently, both the Courts have held the respondent/plaintiff to be the owner and in possession of the suit land.

11. On the other hand, the defence raised by the appellant/defendants to the effect that they were in continuous, uninterrupted and hostile possession of the suit land since long, has been disbelieved.

12. It is more than settled that unless the findings of fact recorded by the learned trial Court and the learned First Appellate Court concurrently are found perverse to the record, this Court in Regular Second Appeal will not show any indulgence.

13. On perusal of record, I do not find any illegality or perversity committed by both the Courts. The presumption attached to the records of rights was rebuttable and the burden to rebut such entries was on the defendants. One of the defendants Tirath Ram had

appeared as his own witness. He tendered his examination-in-chief by way of affidavit in which, assertions regarding long standing possession of the defendants on suit land was made. It was stated that the possession of the defendants on the suit land was continuous, peaceful and had ripened into the ownership by efflux of time. Except for the bald assertions by one of the defendants, no other credible evidence could be produced by them. Though, the defendants had examined three more witnesses but after going through their statements, it can easily be said that their testimonies cannot help the cause of the defendants for the reason that in the examination-in-chief of all these witnesses (DW-2 to DW-4), the contents of the affidavit filed by defendant Tirath Ram had been reproduced, which could not have been the case. This shows that DW-2 to DW-4 were procured witnesses and had marked their signatures and the thumb impressions even without understanding the import of the contents thereof.

14. Thus, since the defendants had failed to discharge the burden, no fault can be found with the findings of fact recorded by both the Court.

15. The substantial questions of law, as noticed above, are decided against the appellant/ defendants.

16. In result, the appeal is dismissed. The judgment and decree dated 16.3.2015, passed by the learned District Judge, Mandi in Civil Appeal No. 16 of 2014, and the judgment and decree dated 19.5.2014, passed by the learned Civil Judge (Sr. Division), Mandi, District Mandi, H.P. in Civil Suit No. 61 of 2010, are further affirmed. No order as to costs. Decree sheet be prepared accordingly.

17. Pending applications, if any, also stand disposed of.

18. Record be sent back forthwith.

22nd November, 2025.
(kck)

(Satyen Vaidya)
Judge