

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 469 of 2014

Reserved on: 19.9.2026

Date of Decision: 30.9.2026

Bhagwan Dass

...Appellant

Versus

Sher Singh (deceased) through his LRs & ors.

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : M/s Paramjit Singh Jammu and
Pawan Gautam, Advocates.

For Respondents No.1(a) : Ms Anjali Soni Verma, Advocate.
to 1(e) and Respondent
No.2.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 28.8.2014, passed by learned Additional District Judge-II, Kangra at Dharamshala, District Kangra (learned Appellate Court) vide which the judgment and decree dated 14.9.2012, passed by learned Civil Judge (Senior Division), Court

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

No. 1, Dehra, District Kangra (learned Trial Court) was upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking mandatory injunction directing defendant No. 1 to make out the deficiency of the land sold by him to the plaintiff had and declaration that he had become the owner by way of adverse possession in the alternative. It was asserted that the plaintiff purchased Khasra No. 479 and 480 from defendant No. 1, Sher Singh, vide registered sale deed dated 29.12.1978 for a consideration of ₹2500/- and mutation to this effect was sanctioned in the plaintiff's favour. One Baldev Singh, brother of defendant No.1, filed an application before the Settlement Collector, Kangra at Dharamshala in 1982 stating that defendant No. 1 had gifted his share in Khasra No. 480. This application was allowed, and mutation was sanctioned in favour of Baldev Singh. However, the Settlement Collector specifically observed that defendant No. 1 had sold more than his share in Khasra No. 480 to the plaintiff and the plaintiff could get the deficient area transferred in his name from defendant No.1. Defendant No. 1

assured the plaintiff that he would be compensated in Khasra No. 479 in lieu of the land lost by him in Khasra No. 480. He also put the plaintiff in possession of Khasra No. 479 in addition to Khasra No. 480 sold to him. Defendant No. 1 agreed to execute a sale deed in favour of the plaintiff. The plaintiff reposed full confidence in defendant No. 1. However, defendant No. 1 sold his share in Khasra No. 479 to defendant No. 2 on 31.5.1989 for a consideration of ₹31,500/-. Baldev Singh also sold his share in Khasra No. 480 to Ranjeet Singh. The plaintiff filed a civil suit for declaration that he had become the owner of Khasra No. 479, but the suit was dismissed. The matter was carried in appeal and was compromised. Defendant No. 2 agreed to execute the sale deed of 1 Kanal 10 Marlas of the land comprised in Khasra No. 479 in favour of the plaintiff for ₹6,000/-, and Sher Singh had also promised the plaintiff to compensate him with another land of the same quality in some other Khasra number. Defendant No. 1 had also signed the compromise filed before the learned Appellate Court. Defendant No. 2 executed a sale deed in favour of the plaintiff as per the compromise. However, Defendant No. 1 failed to honour the promise so made by him. Defendant No. 2 filed an application

for partition and initiated the proceedings for taking possession. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement by Defendant No. 1 taking preliminary objections regarding the suit being barred by the provisions of Order 2 Rule 2 CPC and limitation, lack of maintainability and jurisdiction, and the suit being bad for non-joinder of necessary parties. Defendant No. 1 admitted that he had executed a sale deed in favour of the plaintiff. He also admitted that his brother Baldev Singh had initiated proceedings before the learned Settlement Collector, Dharamshala and mutation was sanctioned in favour of Baldev Singh. It was also admitted that a compromise was effected before the learned Appellate Court between the plaintiff and defendant No. 1, who had sold 1 Kanal 10 Marlas of land to the plaintiff as per the compromise. It was specifically denied that Defendant No. 1 had put the plaintiff in possession of Khasra No. 479 or promised to deliver the possession of the equivalent land to the plaintiff. It was asserted that the suit was filed without any basis. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. Learned Trial Court framed the following issues on 22.10.2002: -

- (1) Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP.
- (2) Whether, in the alternative, the plaintiff has become the owner of the land bearing Khasra No.479 by way of adverse possession, as alleged? OPP.
- (3) Whether this suit is barred under Order 2 Rule 2 CPC? OPD.
- (4) Whether the suit is not maintainable in the present form? OPD.
- (5) Whether the suit is bad for non-joinder of necessary parties? OPD.
- (6) Whether this Court has no jurisdiction to try the present suit? OPD.
- (7) Relief.

6. The parties were called upon to produce the evidence. The plaintiff examined himself (PW-1), Ram Chand (PW-2), Mehar Chand (PW-3), and Aseem Kumar (PW-4). Defendant No. 1 examined himself (DW-1).

7. The suit was dismissed on 24.3.2007. Plaintiff preferred an appeal, and the learned Appellate Court framed the following additional issue and remanded the matter.

6-A. Whether the plaintiff has purchased the suit land from defendant No.1 vide registered sale deed dated 29.12.1978, if so, its effect? OPP.

8. The learned Trial Court held that defendant No.1 had sold the land measuring 0-16-76 hectares to the plaintiff by sale deed (Ext. DW-1/A). There was a stipulation in the sale deed that the vendor/defendant No. 1 would be responsible for any defect in the title and would be liable to refund the sale consideration to the plaintiff in case of any defect in the title. Thus, as per the terms of the sale deed executed between the parties, the plaintiff was only entitled to a refund of the sale consideration and not to an equivalent alternative land. The order passed by the Settlement Collector showed that the gift deed was executed in favour of Baldev before the sale deed in favour of the plaintiff. A compromise was executed between the parties and defendant No. 2 had agreed to sell 1 Kanal 10 Marlas of the land to the plaintiff for ₹6000/-. She had executed the sale deed in favour of the plaintiff. The plea taken by the plaintiff that he was put in possession or had become the owner by way of adverse possession was not proved. The adverse possession could only have been used as a defence and not for filing the suit. Hence, learned Trial Court answered Issue No.3 in the affirmative, Issues No. 1, 2, 4, 5, 6 in the

negative, Issue No. 6-A partly in the affirmative, and dismissed the suit.

9. Being aggrieved by the judgment and decree passed by learned Trial Court, the plaintiff filed an appeal which was decided by learned Additional District Judge-II, Kangra at Dharamshala, District Kangra (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by learned Trial Court that the plaintiff was entitled to the recovery of the money in terms of the sale consideration. The plea taken by the plaintiff that defendant No.1 had promised to provide an alternative equivalent land to him was not established on record. The plaintiff had not proved from which date his possession became adverse to the true owner. There was no infirmity in the judgment and decree passed by learned Trial Court; hence, the appeal was dismissed.

10. Being aggrieved by the judgment and decree passed by learned Courts below, the plaintiff filed the present appeal which was admitted on the following substantial question of law on 27.2.2015: -

Whether on account of misappropriation of the pleadings and law and also misreading and misconstruction of the oral as well as documentary evidence available on record, the findings recorded by both Courts below are erroneous

and, as such, the judgment and decree impugned in this appeal being perverse and vitiated, is not legally sustainable?

11. I have heard M/s Paramjit Singh Jammu and Pawan Gautam, learned counsel for the appellant/plaintiff, and Ms Anjali Soni Verma, learned counsel for the legal representatives of No.1(a) to 1(e) and respondent No.2.

12. Mr Paramjit Singh Jammu, learned counsel for the plaintiff, submitted that the learned Courts below erred in dismissing the suit. It was duly proved that defendant No. 1 had sold the land to the plaintiff and the brother of defendant No. 1 had filed an application for correction claiming that defendant No. 1 had executed a gift deed in his favour. This application was allowed, and the learned Settlement Collector observed that the plaintiff was entitled to be compensated for the land lost by him in Khasra No. 480. The parties had entered into a compromise before the learned Appellate Court in the earlier proceeding which was duly signed by defendant No. 1. It was agreed that the plaintiff would have a right to agitate his claim regarding the lost land in Khasra No. 480. The plea taken by the plaintiff that defendant No.1 had agreed to compensate him for the lost land was duly proved on record. The plea of Order 2 Rule 2 CPC does not apply in the

absence of the pleadings in the previous suit. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Courts below be set aside. He relied upon *Venkategowda Vs. Shivanegowda, RSA No. 48 of 1989, decided on 19.6.1989, Pulavarthi Venkata Subba Rao & ors. Vs. Valluri Jagannadha Rao (deceased) through LRs and ors. 1967 AIR (SC) 591;* and *Ravinder Kaur Grewal Vs. Manjit Kaur 2019 (5) Cal. HCN 136* in support of his submissions.

13. Ms Anjalli Soni Verma, learned counsel for the respondents, submitted that the plaintiff was entitled to be compensated by refund of the sale consideration paid by him for the lost land. There was no stipulation that the plaintiff would be compensated by giving any land to him. Defendant No. 2 had honoured her part of the compromise by executing a sale deed in the plaintiff's favour, and she was unnecessarily dragged into the present litigation. There is no perversity in the findings of facts recorded by learned Courts below. Therefore, she prayed that the present appeal be dismissed.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law:

15. It is undisputed that defendant No. 1 had executed a sale deed (Ext.DW-1/A) in favour of the plaintiff regarding Khasra No. 479 and 480. It was specifically provided in the sale deed that the seller and his property would be responsible for refund of the sale consideration in case the purchaser is deprived of the land purchased by him because of some legal defect or any act of the seller. Therefore, learned Courts below had rightly held that the plaintiff was only entitled to the refund of sale consideration and not an equivalent land

16. A heavy reliance was placed upon the order (Ext.PW-1/B) passed by learned Settlement Collector, Dharamshala, in which it was observed that the area of the purchaser would be reduced after the order and the purchaser would have a right to get the land transferred from Sher Singh or could agitate his right before the competent Court of law. It is difficult to see how this order will help the plaintiff. The option was given to the plaintiff to agitate his claim before the competent Court of law or to get the equivalent land from the seller. The plaintiff chose to agitate his claim before the competent Court of law, and the Court of law held

that the plaintiff was entitled to the refund of the money and not the equivalent land. He never approached the Settlement Officer for claiming that he should be put in possession of the equivalent land as per the order passed by him. Thus, no advantage can be derived from the order passed by the Settlement Collector.

17. The plaintiff had also filed a suit which was dismissed by learned Sub-Judge First Class (I), Dharamshala. The matter was carried in appeal, and a compromise (Ext.P-3) was executed between the parties. Defendant No. 2 agreed to sell 01 Kanal 10 Marlas of the land in Khasra No. 479 to the plaintiff for ₹6000/-. The plaintiff was already the owner of 01 Kanal 01 Marla in Khasra No. 479, and he would become the owner of 02 Kanals 11 Marlas after the execution of the agreement. This compromise was accepted by the Court, and the judgment (Ext. P-1) and decree (Ext.P-2) were passed. It is also undisputed that defendant No. 2 had executed a sale deed of 01 Kanal 10 Marlas in favour of the plaintiff pursuant to the compromise.

18. The compromise (Ext.P-3) mentions that the plaintiff would have a right to retain Khasra No. 480 purchased by him from defendant No. 1 and get the land. It was submitted that

defendant No. 1 had put his signature on this compromise (Ext.P-3); therefore, he had agreed to compensate the plaintiff for the loss of the land. This interpretation of the compromise cannot be accepted. The compromise (Ext. P-3) only provided that the plaintiff would have a right to retain Khasra No. 480, which was purchased by him. It is undisputed that the Settlement Collector had passed an order on 31.12.1985 holding Baldev Singh to be the owner of Khasra No. 480. Therefore, defendant No. 1 was not the owner of Khasra No. 480 and could not have agreed to the retention of Khasra No. 480 by the plaintiff. The words प्राप्त करने का अपना हक अलग बना रहेगा (the right to obtain would be separately maintained) cannot be construed to mean that right to obtain the possession of the land. It has been held by learned Courts below concurrently that the plaintiff has a right to obtain the refund of the sale consideration, which is also apparent from the sale deed. Therefore, the right available to the plaintiff was the right to obtain the refund of the sale consideration and not a right to obtain the equivalent land.

19. Even if the contention of the plaintiff is accepted as correct that the right was conferred by this agreement, the remedy

of the plaintiff was not to file a civil suit, but to execute the decree because no civil suit lies for the execution of an executable decree². Thus, the present civil suit could not have been filed based on an earlier compromise decree passed in favour of the plaintiff.

20. The claim projected by the plaintiff that he was put in possession of Khasra No. 479 and he became the owner by way of adverse possession is falsified by the recitals of the compromise (Ext.P-3), in which it was specifically mentioned that the plaintiff was owner in possession of 01 Kanal 10 Marla and he would become the owner of 02 Kanals 11 Marlas after the execution of the compromise. The plaintiff put his signature on this compromise, clearly acknowledging that he was in possession of 01 Kanal 01 Marla of Khasra No. 479. This falsifies the claim projected by him before the Court that he was put in possession of Khasra No. 479 in lieu of Khasra No. 480 lost by him.

21. The judgment in *Venkategowda* (supra) and *Pulavarthi Venkata* (supra) that the pleadings in the earlier suit are required to be filed does not apply to the present case. Similarly, the plaintiff can file a civil suit based on adverse possession, as held in *Ravinder Kaur Grewal* (supra), also does not apply to the present

² Kata Singh v. Jaswant Singh, 2002 SCC OnLine P&H 1109

case. Therefore, not much advantage can be derived from the cited judgments.

22. No other point was urged.

23. Therefore, the learned Courts below had not misappreciated the pleadings or misread the oral and documentary evidence recorded by the learned Courts below, and this substantial question of law is answered accordingly.

Final order:

24. In view of the above, the present appeal fails and is dismissed.

25. Pending application(s), if any, also stand(s) disposed of.

26. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

30th September, 2026
(Chander)