IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 230 of 2013
Date of decision: 17.11.2026

Amit Kumar ...Appellant

Versus

Bir Singh ...Respondent.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. Vijay Chaudhary, Advocate

For the respondent : Mr. M.A. Safee, Advocate, vice Mr.Ashok Chaudhary, Advocate.

Romesh Verma, Judge (Oral):

The instant regular second appeal arises out of the judgment and decree as passed by the learned Additional District Judge (I), Kangra at Dharamshala, dated 29.11.2012, whereby the appeal filed by the defendant, Bir Singh, came to be allowed and the suit as filed by the plaintiff was ordered to be dismissed, and the judgment and decree as passed by the learned Civil Judge (Junior Division), Jawali, District Kangra, dated 31.12.2010, was reversed, whereby the suit filed by the plaintiff, Amit Kumar, for vacant possession was partly decreed.

2. The facts as emerge in the present case are that the appellant/plaintiff filed a suit for vacant possession against the

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

defendant/respondent on the ground that he is the owner of the land comprised in Khata No. 172 min, Khatauni No. 393 min, Khasra No. 1512, measuring 0-00-50 HMs, situated in Mohal Dhan, Mauza and Tehsil Jawali, District Kangra, as per Jamabandi for the year 1998-1999, since he had purchased the suit land from Shri Sabeer Singh. It was submitted by the plaintiff that the defendant, who is a very headstrong person and has no regard for law on 12.04.2003, took possession of the suit land and constructed a latrine and septic tank over the suit land in the absence and at the back of the plaintiff. The defendant also cut and removed one mango tree and other trees standing over the suit land in the month of April, 2003 and caused loss to the tune of Rs.6,000/- to the plaintiff.

3. The father of the plaintiff, aggrieved by this illegal action, filed an application for demarcation before the Tehsildar-cum-Assistant Collector 2nd Grade, Jawali, who ordered the Field Kanungo to carry out the demarcation of the suit land as well as land comprised in Khasra Nos. 1513, 1516 and 1517. The Field Kanungo demarcated the suit land and the other land and found that the defendant had encroached upon the suit land by raising construction over the same. The demarcation dated 20.11.2003 was made final by the Tehsildar-cum-Assistant Collector 2nd Grade, Jawali, vide his order dated 11.12.2003. Therefore, under such circumstances, the plaintiff filed a suit for vacant possession by passing a decree of demolition of

structure and removal of *malba* over the land as fully detailed in relief 'A', and a decree for recovery of Rs.6,000/- along with interest as claimed in the suit.

4. The suit as filed by the plaintiff-appellant came to be resisted by filing written statement on behalf of the defendant. Preliminary objections with respect to maintainability, locus standi, cause of action, estoppel, etc., were raised in the defence by the defendant. It was contended by the defendant that the plaintiff has not come to the Court with clean hands and has suppressed material facts, as a correction application which has been filed by the defendant, is still pending before the revenue authorities, i.e., the Settlement Officer, Kangra at Dharamshala and till the time any decision is taken by the said authority, the suit as instituted by the plaintiff is premature. It was stated that the suit land is part and parcel of old Khasra No. 794 and has been wrongly merged in Khasra No.796/2. Further, it was averred that the suit land bearing Khasra No.1512 has been carved out from the land of old Khasra No.794 and has been wrongly shown as part of Khasra No.796/2.

5. On merits, all the averments and contentions as raised in the plaint were refuted and denied. As per the defendant he is in possession of the suit land since 1973, when his predecessor-in-interest, being a Pong Dam oustee, purchased the suit land and settled there and since his predecessor-in-interest was owner in

possession of the same, he constructed a septic tank and latrine over the same in the year 1998-1999. Precisely, all the averments as made in the plaint were refuted by the defendant in the written statement and he prayed for the dismissal of the suit.

6. The plaintiff filed replication to the written statement and reiterated all the averments as made in the suit.

7. The learned trial Court framed the issues on 16.05.2005, in the following manner:

1. Whether the plaintiff is entitled for vacant possession of the suit land by way of demolition structure as alleged? OPP
2. Whether the plaintiff is entitled for recovery of Rs. 6000/- alongwith interest at the rate of 12% per annum on account of damages by cutting and removing the trees from the suit land as alleged? OPP
3. Whether the plaintiff has no cause of action to file the present suit, as alleged?
4. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD
5. Whether the plaintiff has no locus-standi to file the present suit? OPD
6. Relief.

8. The learned trial Court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 31.12.2010, the learned Civil Judge (Junior Division), Jawali, District Kangra, HP, partly decreed the suit as filed by the appellant-plaintiff by passing a decree for vacant possession by way of demolition of structure and removal of *malba* in favour of the plaintiff and against the defendant, with a direction to the defendant to hand over the vacant possession of the suit land comprised in Khata

No. 172 min, Khatauni No.393 min, Khasra No. 1512, measuring 0-00-51 HMs, situated in Mohal Dhan, Mauza and Tehsil Jawali, District Kangra, as per Jamabandi for the year 1998-1999, to the plaintiff. However, the claim of the plaintiff with respect to the recovery of Rs.6,000/- was ordered to be dismissed.

9. Feeling aggrieved, the defendant preferred an appeal in the Court of the learned Additional District Judge (I), Kangra at Dharamshala on 15.03.2011. The learned first Appellate Court, while invoking the provisions of Section 96 of the CPC, vide its impugned judgment and decree dated 29.11.2012, accepted the appeal as filed by the defendant and dismissed the suit as filed by the plaintiff/present appellant.

10. Feeling dissatisfied, the plaintiff has approached this Court by filing the instant regular second appeal.

11. It is contended by Mr. Vijay Chaudhary, learned counsel for the appellant/plaintiff, that the impugned judgment as passed by the learned Additional District Judge (I), Kangra at Dharamshala, dated 29.11.2012, is erroneous and liable to be quashed and set aside. He submits that learned first appellate Court has erred in holding that since the correction proceedings are pending before the authorities, therefore, the suit as filed by the plaintiff is premature and is not maintainable and, on that count, the dismissal of the suit as filed by the plaintiff is totally illegal, wrong and not sustainable in the eyes of

law. He would submit that, after accepting the instant regular second appeal, the judgment and decree passed by learned first appellate Court deserves to be quashed and set aside and the judgment as passed by learned trial Court deserves to be restored.

12. On the other hand, Mr. M.A. Safee, learned vice counsel for the respondent/defendant, defended the impugned judgment passed by the learned Additional District Judge (I), Kangra at Dharamshala. He would submit that since the correction proceedings were pending at the time of filing of the civil suit, therefore, the suit itself was premature and was not maintainable in its present form and there is no perversity or illegality in the impugned judgment as passed by learned first appellate Court.

13. This Court had admitted the appeal on 23.04.2013, on the following substantial question of law:

> Whether the learned lower appellate Court has mis-interpreted and mis-appreciated the evidence and the law thereby causing prejudice to the appellant?

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

15. In the present case, the plaintiff/appellant had approached the Court for grant of decree for vacant possession on the ground that he is the owner of the land comprised in Khata No. 172 min, Khatauni

No. 393 min, Khasra No. 1512, measuring 0-00-50 HMs, situated in Mohal Dhan, Mauza and Tehsil Jawali, District Kangra, as per Jamabandi for the year 1998-1999, on the basis of purchase from Shri Sabeer Singh. It is the case of the plaintiff that the father of the plaintiff applied for demarcation to the Tehsildar-cum-Assistant Collector 2nd Grade, who appointed the Field Kanungo to demarcate the suit land and in the report, it was found that the defendant has encroached upon the suit land by constructing a latrine and septic tank over the same. Therefore, based on the demarcation, the plaintiff sought decree for possession by way of demolition of the structure as raised over the suit land and further sought a decree for recovery of Rs.6,000/- along with interest on account of causing damage to the mango and other trees standing over the suit land.

16. The defendant in his written statement, especially in preliminary objections No.5 and 6, took a stand that since the correction application had been filed by the defendant before the competent authority, i.e., the Settlement Officer, Kangra at Dharamshala and till the time any decision is taken by the said authority, the suit as filed by the plaintiff is premature and is not maintainable in its present form.

17. The plaintiff, in order to substantiate his case, has placed on record the copy of the demarcation report, Ext. PW-3/A and as per the same, the defendant has raised construction over the suit land

bearing Khasra No. 1512 to the extent of 0-00-50 HMs. The copy of Jamabandi for the year 1998-1999 has been placed on record as Ext. P-2.

18. The learned trial Court, after appreciating the oral as well as documentary evidence placed on record, especially on the basis of the demarcation which stood conducted in the year 2003 and in view of the fact that the defendant never raised any objection qua the said demarcation, partly decreed the suit by passing a decree for vacant possession of the suit land comprised in Khata No. 172 min, Khatauni No. 393 min, Khasra No. 1512, measuring 0-00-50 HMs, situated in Mohal Dhan, Mauza and Tehsil Jawali, District Kangra.

19. Learned first appellate Court, without touching the merits of the case, primarily accepted the appeal filed by the defendant and came to the conclusion that since the correction proceedings are pending before the competent authority and the same has not attained finality as the appeal is pending before the learned Divisional Commissioner, Kangra, therefore, the suit as filed by the plaintiff is premature.

20. The learned counsel for the appellant has contended that the learned Divisional Commissioner, after accepting the appeal, remanded the matter to the Naib Tehsildar (Settlement), District Kangra. As per the report which has been placed on record by the learned counsel for the appellant, a statement has been made by the

present respondent/defendant before the Competent Authority that the correction application which he had filed is not in consonance with the law and the same is misconceived. Further, Mr. Vijay Chaudhary, learned counsel for the appellant/plaintiff, has also placed on record the copy of statement of present defendant dated 22.09.2026, wherein he has stated that he does not want to continue with the correction application and does not want any action to be taken on the same. The said fact has been duly acknowledged by the learned counsel for the respondent.

21. A perusal of defence as raised by the defendant in the written statement clearly shows that the only stand which was taken by the defendant in his written statement is that till the time a final decision is taken by the competent authority on his correction application, the suit as filed by the present plaintiff-appellant is premature. Now, on account of the subsequent development whereby the respondent/defendant himself has made the statement before the Naib Tehsildar (Settlement), District Kangra, that the correction application which he had filed is misconceived and that he does not want any determination of the said application and the same may be consigned to the record room, it shatters the case of the present respondent in its entirety.

22. The learned trial Court, on the strength of the copy of the demarcation report which has been placed on record as Ext. PW-3/A,

has rightly come to the conclusion that the defendant-respondent has encroached upon the suit land to the extent of 0-00-50 HMs.

23. Therefore, in view of the statement as made by the respondent/defendant before the competent authority whereby he himself has stated that he does not want any action to be taken on the correction application and the same may be consigned to the record room, the judgment and decree as passed by the learned trial Court deserves to be restored after setting aside the judgment and decree passed by learned first appellate Court.

24. Consequently, in view of the observations made hereinabove, the present appeal is allowed and the judgment and decree as passed by learned Additional District Judge (I) Kangra at Dharamshala, dated 29.11.2012 is quashed and set aside.

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

(Romesh Verma)
Judge

17th November, 2026.
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