IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

RSA No. 153 of 2019

Decided on: 17.11.2026

Sarjeewan Kumar & others

... Appellants

Versus

Kewal Kumar

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Appellants:	Mr. Ajay Kumar, Senior Advocate, assisted by Mr. Vinay Kumar, Advocate, for appellants No. 2 to 5.
For the Respondent *:*	Mr. R.K. Sharma, Senior Advocate, assisted by Mr. Arun Kumar, Advocate.

Virender Singh, Judge (oral)

Appellants have preferred an appeal under section 100 of Code of Civil Procedure, (hereinafter referred to as, 'the CPC'), against the judgment and decree, dated 19.6.2018, passed by the Court of learned Additional District Judge (II), Kangra at Dharamshala, H.P. (Camp at Jawali) (hereinafter referred to as 'the

First Appellate Court'), in Civil Appeal No. 30-J of 2015, titled as, 'Chanchla Devi & others versus Kewal Kumar'.

2. By way of judgment and decree dated 19.6.2018, the learned First Appellate Court has dismissed the appeal preferred by the present appellants, against the judgment and decree dated 20.6.2015, passed by the Court of learned Civil Judge, (Junior Division), Jawali, District Kangra, HP, (hereinafter referred as 'the trial Court'), in Civil Suit No. 209 of 2010, titled as, 'Kewal Kumar versus Rattnu'.

3. By way of judgment and decree dated 20.6.2015, the learned trial Court has decreed the suit of respondent Kewal Kumar, by granting the following relief:

> *"23. Keeping in view my findings on various issues, suit of the plaintiff is decreed and the plaintiff is held entitled to recover possession of the land comprised in Khata No. 33, Khatauni 37, Khasra No. 239, land measuring 0-16-45 Hms, situated in Mohal Ban Tungali, Mauza Nagrota Surian, Tehsil Jawali, District Kangra, H.P. from defendant alongwith costs. Decree sheet be prepared accordingly. The case file complete in all respects be consigned to record room."*

4. For the sake of convenience, parties to the lis, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

5. Brief facts, leading to filing of the present appeal before this Court, as borne out from the record, may be summed up as under:

Plaintiff Kewal Kumar has filed the suit for possession against the defendant, qua the land comprised in khata No. 33, Khatauni No. 37, Khasra No. 239, land measuring 0-16-45 hectares, situated in Mohal Ban Taungali, Mauza Nagrota Surian, Tehsil Jawali, District Kangra, HP, as per jamabandi for the year 2006-2007 (hereinafter referred to as 'the suit land').

5.1 According to the plaintiff, the defendant is in illegal and unauthorized possession, as, he is owner of the land.

5.2 According to the plaintiff, he was cultivating the suit land, till March 2005 and defendant, who was influential person, during the settlement operation, which took place in the said Muhal, in the year 1997-

1998, in collusion and connivance with the concerned authority, got his name recorded, in the column of cultivation as kabiz, over the suit land.

5.3 Thereafter, defendant on the pretext of the wrong entry, obtained the possession of the suit land at the back and against the will of the plaintiff.

5.4 On the basis of the aforesaid facts, the plaintiff has sought the relief of possession.

6. When, put to notice, suit has been contested by the defendant, by filing the written statement, in which preliminary objections have been taken that the suit is not maintainable; plaintiff has no cause of action; the plaintiff has not approached the Court with clean hands.

6.1 In addition to this, the defendant has set up the plea of adverse possession, by asserting that he is in possession of the suit land for more than 40 years. In this regard, he has relied upon the copy of *misal haqiat bandobast* for the year 1977-1978, in which, name of the defendant has been entered as kabiz-a-najayaz.

6.2 According to the defendant, he is in possession of the suit property, since 1.12.1970 and now, his possession has been ripened into ownership of the suit land, by way of adverse possession.

6.3 On merit, the suit has been contested on the similar grounds.

7. From the pleadings of the parties, the learned trial Court has framed the following issues, vide order dated 27.8.2011.

> *"1.Whether plaintiff is owner in possession of the suit land, as alleged? OPP*
> *2. Whether possession of the defendant over the suit land is illegal, wrongful and unauthorised, since March, 2005, as alleged? OPP.*
> *3. If issue Nos. 1 & 2 are proved in affirmative then whether plaintiff is entitled for a decree of possession, as prayed for? OPP.*
> *4. Whether suit of the plaintiff is not maintainable? OPD.*
> *5. Whether suit of the plaintiff is without cause of action? OPD.*
> *6. Whether plaintiff has not approached the Court with clean hands and has suppressed the material facts? OPD*
> *7. Whether defendant has become owner of the suit land by way of adverse possession, as alleged? OPD*
> *8. Relief.*

8. Thereafter, the parties to the lis were directed to adduce evidence.

9. After closure of the evidence, the learned trial Court, after hearing the learned counsel appearing for the parties, has decreed the suit of the plaintiff, as referred to above.

10. Feeling aggrieved from the judgment of the learned trial Court, defendant Rattnu has preferred the appeal before the learned First Appellate Court. During pendency of the appeal, Rattnu expired and his LRs were ordered to be brought on record.

11. After dismissal of the said appeal, the present appeal has been preferred, before this Court, assailing the judgment and decree passed by the learned trial Court, as affirmed by the learned First Appellate Court, mainly on the ground that the learned trial Court has wrongly decided issue Nos. 1 to 7, whereas, those issues should have been decided, in favour of the defendant.

12. According to the defendant, the learned trial Court has not taken into consideration the relevant evidence, so adduced.

13. In addition to this, the judgment and decree, passed by the learned trial Court, has also been assailed

on the ground that the learned First Appellate Court has wrongly rejected the application, under Order 41 Rule 27 of the CPC, by virtue of which, the defendant intended to adduce the additional evidence.

14. On the basis of the above facts, a prayer has been made to allow the appeal, by setting aside the judgment and decree, passed by the learned trial Court, as affirmed by the learned First Appellate Court.

15. The appeal has been admitted before this Court, on the following substantial questions of law, vide order dated 9.04.2019.

> *"1. Whether the findings of the learned First Appellate Court and the learned Trial Court are a result of complete misreading of pleadings, evidence particularly Exhibit Ex.D2, D3 and D4 and the law as applicable to the facts of the case and as such palpably erroneous, perverse and illegal and if so to what effect?*
>
> *2. Whether the suit of the plaintiff was within limitation ?*
>
> *3. Whether the First Appellate Court failed to formulate proper points for determination and whether failure of it has affected its judgment and resulted into miscarriage of justice to appellants?*
>
> *4. Whether the learned First Appellate Court was justified in rejecting the application of the appellants filed under Order 41 Rule 27 C.P.C. and whether rejection thereof has resulted into miscarriage of justice to the appellants.*

5. Whether the learned Trial Court below has erred gravely and acted with material illegality and irregularity by not framing proper issues arising from the pleadings and whether non framing of such issues has resulted into miscarriage of justice and mistrial of the case and if so what effect?

16. Heard.

17. The defendant, in the present case, has taken the plea of adverse possession. According to the learned trial Court, the plea of adverse possession, has not been proved by the defendant, by leading the cogent evidence. Those findings have also been upheld by the learned First Appellate Court.

18. In this factual background, this Court would now proceed further to substantiate the substantial questions of law, as framed by this court, on 9.7.2019.

19. First of all coming to substantial question of law No.1 is concerned, the defendant has relied upon the documentary evidence, Exhibits D2, D3, D4. Ext. D2 is *misal haqiat istemal* for the year 1997-1998, whereas Ext. D3 is misal haqiyat bandobast jadid, for the year 1979-1980 and Ext. D4 is Misal Haqiyat Bandobast jadid for the year 1977-1978. The subject matter of the

lis is khasra No. 239, as per the Jamabandi for the year 2006-2007.

20. As per misal Haqiyat, for the year 1979-80, Ext. D3, the suit land was allotted to plaintiff Kewal Kumar. It is no longer res-integra that when a party is taking the plea of adverse possession, which is available, only against the true owner, then, the onus is upon the said party to prove the fact as to how he entered into the possession of the suit land, claiming the adverse possession.

21. The defendant has taken the plea of adverse possession and when, he stepped into the witness box, he has filed his affidavit in his examination-in-chief, in which, he has asserted the inception of his possession, over the suit land as on 1.12.1970. When, he was cross examined, he has taken totally different stand, by asserting that he is owner of the suit land and and even he could not spell out the meaning of adverse possession. Not only this, he has discarded the averments of his affidavit, filed in examination-in-chief, as Ext. DW1/A.

22. He has also stated that from the very inception, he is cultivating the suit land as owner. When, a person has taken the plea of adverse possession, then, he is estopped from taking the plea of ownership, as, according to the revenue records, relied upon by the plaintiff, the name of the plaintiff as owner, has duly been recorded.

23. When, the defendant has failed to prove his plea of adverse possession, then, the learned trial Court has rightly decreed the suit and by no stretch of imagination, those findings can be said to be perverse findings.

24. So far as the substantial question of law No. 2 is concerned, the learned trial Court, while dismissing the application, under Order 41 Rule 27 of the CPC, has elaborately discussed the provisions of Order 41 Rule 27 of the CPC, by virtue of which, the defendant intended to produce the certified copy of order/judgment in case No. 2 of 2007, decided on 17.09.1997 by consolidating the same with case titled as, Rattan Chand versus Kawal Kumar'. The above

documents were already in possession of the defendant, and the certified copy of the order, passed by the Assistant Collector-1st Grade, Dehra was obtained by the defendant, in the year 2010, much prior to the filing of the Civil Suit, before the learned trial Court.

25. In light of the above discussion and in view of the stand taken by the defendant, in his cross-examination, it is the case, which can be said to be the case of no evidence, to prove the adverse possession.

26. Consequently, the substantial questions of law are decided, against the appellants, and the present appeal is dismissed.

27. The pending application(s), if any, are also disposed of, accordingly.

28. Record be sent back.

(Virender Singh)
Judge

17.11.2026
Kalpana