SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs.

Shri Keshav Ram

(K Ramaswamy and G.B.Pattanaik JJ.)

08.10.1996

JUDGMENT

PATTANAIK, J.

Leave granted.

State of Himachal Pradesh has preferred this appeal against the judgment of the High Court of Himachal Pradesh dated 4.5.1994 in R.S.A. No. 122/86,

The respondents filed the suit for a declaration that they are the owners in possession of the land comprised in Khasra No. 153/1 measuring 30 bighas and 18 biswas situated in Chak Dakana and for restraining the appellant from interfering with the possession of the respondents. It was alleged in the plaint that the disputed land stood recorded in the settlement papers in the year 1950 in the name of the State as the owner. When the plaintiffs came to know of the same an application for correction was made and the settlement authority after holding a detailed enquiry passed an order for correction and pursuant to the said order necessary correction was made in the register. The plaintiffs, therefore, filed an application under Section 37 of the Himachal Pradesh Land Revenue Act but the Assistant Collector deciding the matter directed that the matter should be referred to the Civil Court and hence the plaintiffs filed the suit for relief as already stated. The State contested the suit denying the allegations made in the plaint. It was also averred in the written statement that the land in question was initially recorded in the name of Raja Sahib of Keonthal and after intermediary interest stood abolished the State became the owner of the land. In the Revenue papers State was recorded as the owner. The so called order of the Assistant Settlement Officer on which the plaintiffs relied will not confer any title on the plaintiffs. According to the defendant - State, the disputed land originally stood recorded in the name of Raja Sahib of Keonthal and thereafter the State was recorded to be the owner of the land in the record of right prepared in the year 1949-50, therefore, the suit is liable to be dismissed. The learned Sub Judge, Ist Class. Theog, Distt. Shimla, however, relying upon the order passed by the Assistant Settlement Officer came to hold that plaintiffs are the owners in possession of the land in dispute and hence decreed the suit. The State carried the matter in appeal and the lower Appellate Court came to the conclusion that the entry in the Revenue register for the year 1949-50 showing the State to be the owner was an error and the Trial Court rightly held the plaintiffs to be owners in possession of the disputed land. With this conclusion, the judgment and decree of the Trial Court having been confirmed and the appeal of the State having been dismissed, the matter has been carried to the High Court in second appeal. The

learned Single Judge of the High Court by the impugned judgment dismissed the second appeal solely relying upon the order of the Assistant Settlement Officer and hence the present appeal.

The learned counsel appearing for the appellant contends that the very order of the Settlement Officer directing correction of the entry in record of right is not there on record and at any rate on the basis of the said order plaintiffs' title to the disputed land could not have been declared as an entry in the settlement papers does not create or extinguish title and at the most has a presumptive value that on the date when entry was made the person concerned was in possession of the land. It is accordingly contended that the courts below committed errors of law in declaring plaintiffs title on the basis of the aforesaid order of the Assistant Settlement Officer. The learned counsel, for the respondents on the other hand contended that the plaintiffs title having been declared by the courts below on consideration of the entire materials on record, it would not be proper for this Court to interfere with the same in exercise of power under Article 136 of the Constitution of India.

In view of the rival contentions, the question that arises for consideration is whether the plaintiffs have been able to establish their title and the courts below were justified in declaring plaintiffs' title. As has been stated earlier the only piece of evidence or which the courts below relied upon to decree the plaintiffs' suit is the alleged order made by the Assistant Settlement. Officer directing correction of the record of right. The order in question is not there on record but the plaintiffs relied upon the register where the correction appears to have been given effect to. The question, therefore, arises as to whether the entry in the settlement papers recording somebody's name could create or extinguish title in favour of the person concerned? It is to be seen that the disputed land originally stood recorded in the name of Raja Sahib of Keonthal and thereafter the State was recorded to be the owner of the land in the record of right prepared in the year 1549-0. In the absence of the very order of the Assistant Settlement Officer directing necessary correction to be made in favour of the plaintiffs, it is not possible to visualize on what basis the aforesaid direction had been made. But at any rate such an entry in the Revenues papers by no stretch of imagination can form the basis for declaration of title in favour the plaintiffs. To our querry as to whether there is any other document on the basis of which the plaintiffs can claim title over The disputed land, the learned counsel for the plaintiffs- respondents could not point out any other document apart from the alleged correction made in the register pursuant to the order of the Assistant Settlement Officer. In our considered opinion, the courts below committed serious error of law in declaring plaintiffs' title on the basis of the aforesaid order of correction and the consequential entry in the Revenue papers. In the circumstances the appeal is allowed and the judgment and decree passed in all the there forums are set aside. The plaintiffs' suit stand dismissed. There will be no order as to costs.