

# SUPREME COURT OF INDIA

Bhau Ram

Vs.

Janak Singh

C.A.No.5343 of 2012

(P.Sathasivam and Ranjan Gogoi, JJ.)

20.07.2012

## JUDGMENT

**P.Sathasivam, J.**

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 20.09.2010 passed by the High Court of Himachal Pradesh at Shimla in R.S.A. No. 501 of 2009 whereby the High Court dismissed the appeal filed by the appellant herein.

3. Brief facts:

“(a) One Shanker Lal owned and possessed several lands in District Shimla including the land in question. Originally the land in question was owned by Smt. Lari Mohansingh @ Madna Wati and was in occupation of Shankar Lal as a tenant. After coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, Shanker Lal, moved an application on 21.01.1957, for proprietary rights under Section 11 of the said Act before the Compensation Officer, Mahesu. In the meantime, Madna Wati sold the suit land to Panu Ram (defendant No.2) on 22.10.1960. Defendant No.2 purchased the said land as benami in the name of his wife Kamla Devi (defendant No.1), who was a minor at that time. After the sale of suit land, defendant No.1 through defendant No.2 was substituted as respondents in place of Madna Wati in the application pending before the Compensation Officer. During the pendency of the application, Shanker Lal died on 07.06.1960 and after his death, his wife Reshmoo Devi was substituted as his legal representative. Vide his order dated 31.08.1964, the Compensation Officer allowed the application and granted proprietary rights to Reshmoo Devi.

(b) Against the said order, Kamla Devi (defendant No.1) preferred an appeal before the District Judge, Mahesu, who, by his order dated 14.12.1966, dismissed the same.

(c) During the pendency of the proceedings before the Compensation Officer, one Raghunath Singh Thakur of Marina Hotel, Shimla filed a Civil Suit No. 80/1 of 1962 in the Court of Sub-Judge, Mahesu against Madna Wati and Kamla Devi alleging that the suit land along with other land property was mortgaged with him by Madna Wati and, therefore, she had no rights to sell or transfer the suit land. The said suit was decreed in favour of Raghunath Singh. Aggrieved by the said order, they filed an appeal before the Judicial Commissioner, Himachal Pradesh at Shimla and Reshmoo Devi also preferred an appeal before the Judicial Commissioner, Shimla. Both the appeals were transferred to the High Court of Himachal Pradesh. The High Court allowed the appeal preferred by Reshmoo Devi and set aside the order of the sub-Judge Mahesu to the extent it affected her rights and further directed her to seek remedy against Kamla Devi by a separate suit.

(d) During the pendency of the appeal before the High Court, since the possession was forcibly taken from Reshmoo Devi, she filed a suit for recovery of possession being Suit No. 61/1 of 1976 before the Sub-Judge (I), Shima which was decreed in her favour on 25.03.1985.

(e) Aggrieved by that judgment, Kamla Devi filed an appeal before the sub Judge, Ist Class, Shimla. During the pendency of the appeal, Reshmoo Devi died on 25.09.1985. An application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (in short "CPC") was filed by the sister of Reshmoo Devi for bringing her on record as legal representative (L.R.). However, another application was filed by Hira Singh and Attar Singh that they may be brought on record as L.Rs of Reshmoo Devi on the basis of a Will.

(f) Challenging the said Will, Bhau Ram, the appellant herein, who was the nephew of Reshmoo Devi, filed an application to implead himself as L.R. of Reshmoo Devi. By order dated 29.11.1986, sub-Judge Ist Class, Shimla held that Bhau Ram, the appellant herein, being the son of real brother of Shankar Lal, husband of Reshmoo Devi is the only legal representative.

(g) The appeal filed by Kamla Devi Ors. was registered as Civil Appeal No. 118-S/13 of 1987. By order dated 02.12.1987, the Additional District Judge allowed the appeal and dismissed the suit filed by Reshmoo Devi for possession as barred by limitation. The appellant herein, who was substituted as L.R., filed second appeal being R.S.A. No.113 of 1988 before the High Court which was allowed by the High Court on 25.05.2000.

(h) Against that order, Kamla Devi Ors. filed special leave petition before this Court which was dismissed.

(i) Involving the same issue, Attar Singh filed a Suit being Suit No. 424/1 of 99/97 in the Court of sub-Judge-IV, Shimla which was dismissed for default on 23.02.2001 but the same was restored vide order dated 14.08.2002. He again filed a Civil Suit No. 10/1 of 2004 before the Civil Judge (Jr. Division- II) Rohru, Shimla for possession of the suit land belonging to Reshmoo Devi. During the course of proceedings, the appellant herein filed an application under Order VII Rule 11 read with Section 151 of CPC for rejection of the plaint on certain grounds. By order dated 17.11.2004, the Civil Judge allowed the application and dismissed the suit filed by Attar Singh.

(j) Against the said order, Attar Singh filed F.A. No. 90-S/13 of 2005 before the District Judge (Forest), Shimla. After the death of Attar Singh, Kamla Devi was brought on record as his legal representative. Vide order dated 31.07.2009, the District Judge (Forest) allowed the appeal. Challenging the said order, the appellant herein and his sister, Kular Mani, filed R.S.A. No. 501 of 2009 before the High Court. By the impugned order dated 20.09.2010, the High Court dismissed the appeal. Against the said order, the appellant herein filed an appeal by way of special leave petition before this Court.

4. Heard Ms. Radhika Gautam, learned counsel for the appellant and Mr. Sudhir Chandra, learned senior counsel for respondent No.1 and Mr. T. V. Ratnam, learned counsel for respondent No.2.

5. The only point for consideration in this appeal is whether the High Court is justified in confirming the decision of the lower appellate Court and remitting the matter to trial Court for fresh consideration of all the issues.

6. In order to ascertain an answer for the above question, we have to consider whether the application under Order VII Rule 11 CPC filed by the defendant can be decided merely on the basis of the plaint and whether the other materials filed by the defendant in support of the application can also be looked into. The trial Court allowed the application of the appellant/defendant No.1 filed under Order VII Rule 11 CPC on the ground that the plaint was barred under the provisions of Order IX Rules 8 9 CPC and Order XXIII Rule 1 (3) 4 (b) of CPC. The said order of the trial Court was set aside by the first appellate Court on the ground that the trial Court had taken the pleas from the written statement of the defendant which is not permissible under Order VII Rule 11 CPC and the High Court in the second appeal confirmed the judgment of the first appellate Court.

7. It is relevant to point out the findings of the trial Court particularly with reference to the Suit No. 424/1 of 99/97 which was dismissed for default had been restored by the trial Court even at the time of filing of the application by the defendant under Order VII Rule 11 CPC and it is also brought to our notice that the said proceedings are going on. In view of the

same, the provisions of Order IX Rules 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the present suit are with regard to different properties. For the same reasons, the provisions of Order XXIII Rule 1 (3) 4 (b) of C.P.C are not applicable.

8. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. [vide *C. Natrajan vs. Ashim Bai and Another*<sup>1</sup>*Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others*<sup>2</sup>*Hardesh Ores (P) Ltd. vs. Hede and Company*<sup>3</sup>*Mayar (H.K.) Ltd. and Others vs. Owners Parties, Vessel M.V. Fortune Express and others*<sup>4</sup>*Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*<sup>5</sup>*Saleem Bhai and Others vs. State of Maharashtra and Others*<sup>6</sup>.The above view has been once again reiterated in the recent decision of this Court in *The Church of Christ Charitable Trust Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*<sup>7</sup>.

9. As rightly pointed out by learned counsel for the respondents, the questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that only the averments in the plaint can be looked into while deciding the application under Order VII Rule 11. This aspect has been rightly dealt with by the High Court.

10. In the light of the above discussion and in view of the settled legal position, as mentioned above, we are of the view that the High Court is fully justified in confirming the decision of the appellate Court remitting the matter to the trial Court for consideration of all the issues. In view of the fact that the suit is pending from 2002, we direct the trial Court to decide the suit in its entirety considering all the issues, after affording adequate opportunity to both the parties, and dispose of the same within a period of six months from the date of receipt of copy of this judgment.

11. Consequently, the civil appeal is dismissed with the above direction. No order as to costs.

#### *Judgment Referred*

<sup>1</sup>(2007) 14 SCC 0183

<sup>2</sup>(2007) 10 SCC 0059

<sup>3</sup>(2007) 5 SCC 0614

<sup>4</sup>(2006) 3 SCC 0100

<sup>5</sup>(2004) 3 SCC 0137

<sup>6</sup>(2003) 1 SCC 0557

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