

CASE NO.:  
Appeal (civil) 6616 of 2000

PETITIONER:  
Girja Kumar & Ors

RESPONDENT:  
State of Himachal Pradesh & Anr

DATE OF JUDGMENT: 31/10/2007

BENCH:  
Tarun Chatterjee & P. Sathasivam

JUDGMENT:  
JUDGMENT

P. Sathasivam, J.

1) The plaintiffs who succeeded before the trial Court, lower appellate Court and lost their suit before the High Court filed the above appeal.

2) Brief facts required for the disposal of this appeal are as follows:

According to the plaintiffs-appellants, they were in possession of the suit land for more than 40 years. The suit was filed in 1989 for declaration of title on the ground of adverse possession and for injunction. The trial Court decreed the suit and the appeal filed by the defendants was dismissed by the first appellate Court. When the second appeal was filed before the High Court, the High Court, after finding that there is no evidence, remanded the matter to the trial Court for taking further evidence. The said order of the High Court was challenged before this Court by way of C.A. No. 1348 of 1999. By judgment dated 8.3.1999, this Court, after recording a finding that the High Court was in error and not justified in sending the matter back to cure any lacuna in the evidence, set aside the order, restored Second Appeal No. 304 of 1992 to the file of the High Court and directed it to dispose of the same afresh on the available evidence.

3) Pursuant to the said direction, the High Court formulated two substantial questions of law which are as under:

\0231. Whether the suit was barred in view of the provisions of Section 163(3) of the H.P. Land Revenue Act, 1953?

2. Whether the suit of the plaintiff, in the facts of the case that on 2nd April, 1970, an order of ejectment was passed ordering the ejectment of the plaintiff under Section 163 of the H.P. Land Revenue Act, 1954, can be said to be within the period of

limitation?\024

While considering the first question, the High Court concluded that inasmuch as an order of ejectment of the plaintiffs from the land in dispute under Section 163 of the H.P. Land Revenue Act, 1953 was passed on 2.4.1970 by the Settlement Officer, the suit having been filed about 19 years after such order is barred by limitation. After arriving at such conclusion on question No.1, the High Court, without going into the second question or advertent to the case of the plaintiffs i.e., adverse possession, by order dated 04.01.2000, allowed the second appeal, set aside the judgments and decrees passed by the trial Court as well as by the lower appellate Court and dismissed the suit of the plaintiffs as being time barred. Challenging the said order, the plaintiffs have filed the present appeal.

4) Heard Mr. Himinder Lal, learned counsel appearing for the appellants and Mr. Vivek Singh Attri, learned counsel appearing for the respondents.

5) We have already extracted the first substantial question of law which relates to limitation. The High Court proceeded the said issue on the ground that though the order of ejectment of the plaintiffs from the land in dispute came to be passed by the Settlement Officer on 2.4.1970 however, the plaintiffs filed the Suit No. 41 of 1989 only on 23.2.1989 before the Senior sub-Judge, Mandi which was barred by limitation. The High Court, in arriving at such a conclusion, relied on Section 163 of the H.P. Land Revenue (Amendment) Act No.15 of 1989. Learned counsel for the respondents herein pointed out that the order said to have been passed on 2.4.1970 by the Settlement Officer was not communicated to them. It is also their claim that they were not issued notice or afforded an opportunity to put forth their case before making an entry/passing an order by the Settlement Officer. In fact, neither before the Courts below nor before the High Court, the proceedings dated 2.4.1970 was produced by the defendants. In fact, there is no specific plea in the written statement as to the limitation and no issue was framed by the trial Court and no point was determined by the lower appellate Court. We verify the defence stated in the written statement, issues framed by the trial Court and the points determined by the lower appellate Court. There is no such plea and issue as to the limitation. Though it would be open to the parties to the suit to raise the plea of limitation before the High Court as pointed out earlier, the defendants have

not taken any effort to place the alleged proceedings dated 2.4.1970 of the Settlement Officer. It is not clear how the High Court arrived at a specific conclusion that suit filed by the plaintiffs was barred by limitation. Even according to the defendants, the entire records relating to the said proceedings were lost. We have already referred to the fact that such issue was not raised and argued before the Courts below. On the other hand, the plaintiffs concentrated that they are entitled to decree in respect of the suit property based on the continuous and uninterrupted possession for over a period of 40 years, that too, to the knowledge of the defendants. In view of the assertion of the plaintiffs that they were neither heard nor afforded an opportunity in the alleged proceedings dated 2.4.1970, the onus is on the defendants/Department to place those relevant record to show that there was valid order by the competent authority. Admittedly, such record was not called for and no material was placed before the Courts below including the High Court. On the other hand, based on the acceptable oral and documentary evidence regarding the claim of adverse possession, the trial Court decreed the suit which was affirmed by the lower Court. Inasmuch as the High Court dismissed the suit only on the ground of limitation and not gone into the claim of adverse possession by plaintiffs, in view of our conclusion and disagreement with the High Court's decision, we have no other option except to remand the matter once again to the High Court for disposal of the second appeal afresh in respect of other issue i.e., adverse possession.

6) Under these circumstances, the judgment and decree dated 4.1.2000 passed by the High Court of Himachal Pradesh in R.S.A. No. 304 of 1992 is set aside and the matter is remitted to the High Court to decide the issue relating to adverse possession. However, it is made clear that except the finding relating to limitation, we have not expressed any opinion on the conclusion of the courts below relating to the other issues; hence it is for the High Court to decide the same on merits one way or the other with the available materials. Inasmuch as the plaintiff's suit is of the year 1989 and even the RSA is of the year 1992, we request the High Court to dispose of the matter within a period of four months from the date of receipt of this judgment.

7) The appeal is allowed to the extent mentioned above. No order as to costs.