

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9933 OF 2017

(Arising out SLP (C) No. 22795 of 2015)

CHHAJJU RAM & ORS.

Petitioner(s)

VERSUS

KISHORI LAL & ANR.

Respondent(s)

O R D E R

- 1) Leave granted.
- 2) Two substantial questions of law were framed in the present case which are reflected from para 2 of the impugned judgment. The Sub-Judge ultimately held that the Civil Court had jurisdiction and decreed the suit. The first Appellate Court partly reversed the decree holding as under:

"28. In the case in hand the plaintiff has sought declaration that he has become owner of the suit land under the provisions of H.P. Tenancy and Land Reforms Act, 1972. To my mind such a declaration normally cannot be granted by the Civil Court as only a Land Reform Officer can decide about the conferment of proprietary rights under Section 104 read with Rule 29 of the H.P. Tenancy and Land Reforms Act. This view appears to have been taken by the Hon'ble High Court in the case of *Gopal Krishan Vs. Jagtamba Parsad* 2002 (1) S.L.J. 425 and *Roshan Lal vs. Surjan*, 1999 S.L.J. (1) 502 (HP). In both these cases it was held that power to grant injunction is a common law remedy exclusively within the province of Civil

Court. However, the question of conferment of the proprietary rights does not fall within the jurisdiction of the Civil Court and parties are at liberty to approach the Land Reform Officer for the determination of such dispute. Accordingly, declaration granted by the learned trial Judge to the effect that the plaintiff has become owner of the suit land measuring 8 Kanals 18 Marlas comprised in Khewat No.2 min. Khatauni No.2 min. Khasra Nos. 1080 and 1081 situate in village Bangarh Tehsil and Distt. Una is liable to be set aside and it is held that plaintiff is in possession of the suit land as a tenant. In view of this both these points are decided accordingly.

29. In view of my findings on point Nos. 1 and 2 above, the appeal is partly accepted and the relief of declaration as granted by the learned trial Judge is set aside and decree for permanent injunction restraining the defendants from interfering in the possession of the plaintiff over the suit land comprised in Khewat No. 2 min. Khatauni No.2 min. Khasra Nos. 1080 and 1081 measuring 8 Kanals 18 Marlas, situated in village Bangarh Teh. & Distt. Una, H.P. is hereby granted with no order as to costs. Decree sheet be prepared accordingly."

3) The High Court, in Second Appeal, recorded as under:

"9. In this view of the matter, Courts below rightly held the jurisdiction of the Civil Court not to be barred under the provisions of the H.P. Tenancy and Land Reforms Act, 1972. Thus, it cannot be held that Courts below erred in correctly applying the principle of law laid down by this Court in *Chuhniya Devi vs. Jindu Ram*, 1991 (1) Sim. L.C. 223.

10. Substantial question of law, as framed, essentially deals with the question of factual appreciation of evidence by the Courts below. Having heard learned counsel for the parties, Court is of the considered view that no question, much less substantial question of law arises for consideration."

4) Having heard the learned counsel appearing for the parties and having perused the record of the case, we are of the view that both the Courts did not hold the same thing, as is clear from the partial allowance of the appeal by the first Appellate Court. Secondly, we are also of the view that a substantial question of law does arise and this is not a case of mere factual appreciation of evidence as has been held. We, therefore, set aside the impugned judgment and remand the matter to be heard on merits.

5) The Civil Appeal is disposed of accordingly.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
July 31, 2017.

ITEM NO.4

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 22795/2015

(Arising out of impugned final judgment and order dated 11-03-2015 in RSA No. 501/2004 passed by the High Court Of Himachal Pradesh At Shimla)

CHHAJJU RAM & ORS.

Petitioner(s)

VERSUS

KISHORI LAL & ANR.

Respondent(s)

Date : 31-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Ms. Radhika Gautam, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. J.S. Attri, Sr. Adv.
Mr. Rameshwar Prasad Goyal, AOR
Mr. Chandra Nand Jha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Civil Appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)