

A THE STATE OF HIMACHAL PRADESH & ORS.

v.

CHANDERVIR SINGH NEGI
(Civil Appeal Nos. 1276-1277 of 2023)

B FEBRUARY 24, 2023

[M.R. SHAH AND C.T. RAVIKUMAR, JJ.]

Code of Civil Procedure, 1908: s.100 – Limitation Act, 1973 – Arts. 58, 72 – Second appeal – Framing of substantial question of law – Bar by limitation – Suit by the respondent for declaration, mandatory injunction and seeking direction to the appellants to complete the acquisition proceedings – Respondent’s case that road was constructed on respondent’s land, no compensation was paid and non-compliance of the provisions of the Land Acquisition Act – Trial court dismissed the suit as barred by limitation – Upheld by the first appellate court – Second appeal by the respondent – Allowed by the High Court – On appeal, held: Road in question on the land of the respondent was constructed in the year 1987; trees if any were damaged/removed in the year 1987; the retaining wall was constructed in the year 1987 and the suit filed in the year 2003 – Considering the said facts and circumstances when the trial court held that the suit was barred by limitation and when the same was upheld by the first appellate court, the High Court ought not to have interfered with the said findings of facts in exercise of powers u/s. 100 – High Court did not frame any substantial question of law on the limitation and/or the suit being barred by limitation – High Court has gone on general and broad principles – High Court did not at all consider the real facts, thus, the judgment and order passed by the High Court is unsustainable and is quashed and set aside.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1276-1277 of 2023.

G From the Judgment and Order dated 09.08.2019 of the High Court of Himachal Pradesh at Shimla in RP No.8 of 2018 and dated 22.08.2016 in RSA No.270 of 2007.

H Abhimanyu Jhamba, Ms. Thonpinao Thangal, Samir Ali Khan, Ms. Hatneimawi, Shivam Prashar, Nikhil Jagotra, Ms. Richa Bharti, Advs. for the Appellants.

Ms. Radhika Gautam, Adv. for the Respondent.

A

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.08.2019 passed by the High Court of Himachal Pradesh at Shimla passed in Regular Second Appeal No. 270 of 2007 by which the High Court has allowed the said appeal and has quashed and set aside the judgment and decree passed by the learned Trial Court dismissing the suit and consequently decreeing the suit directing the appellant herein to initiate the acquisition proceedings qua the land of the plaintiff as mentioned in the plaint as well as the order dismissing the review application preferred by the appellant herein, the State of Himachal Pradesh and others have preferred the present appeals.

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2. That the respondent herein - original plaintiff instituted the suit before the learned Trial Court for declaration, mandatory injunction and seeking direction to the appellants herein - original defendants to initiate and complete the acquisition proceedings in respect of the land of the plaintiff and damage to his fruit bearing trees. According to the plaintiff the appellants herein - original defendant nos. 1, 2 & 3 without complying with the provisions of the Land Acquisition Act, constructed a road known as "Tikkari-Larot- Bodra Kwar road" on the land of the plaintiff, but no compensation was paid to the plaintiff. The fruit bearing plants were also damaged.

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2.1 The appellants herein – original defendants contested the suit contending *inter alia* that the suit is barred by law of limitation; that the plaintiff was working as Mate in the Department and in fact the road was constructed on his request and as per the consent; the plaintiff waived off his claim of compensation as the road was constructed with his consent in the year 1987. The learned Trial Court framed the following issues:

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"Issue no.1 :- Whether the plaintiff is entitled for the relief of declaration, as prayed for? OPP

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Issue no.2:- Whether the plaintiff is entitled compensation as alleged? OPP

Issue no. 3:- Whether the suit is not maintainable? OPD Issue no. 4:- Whether the suit is time barred? OPD

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A Issue no. 5:- Whether the plaintiff is estopped by his acts and conduct? OPD

Issue No.6:-Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD

B Issue No. 7:-Whether the plaintiff has no cause of action? OPD

Issue No.8:-Whether the suit is bad for non-joinder of necessary parties? OPD

Issue No.9:- Relief”.

C 2.2 On appreciation of entire evidence on record and considering the fact that the road was constructed in the year 1987 and till 2002 no grievance was made by the plaintiff and as the cause of action arisen in the year 1987, the learned trial Court held the issue No.4 in favour of the defendants and held that the suit was barred by limitation taking into consideration Articles 58 and 72 of the Limitation Act. The learned Trial Court also held the issue Nos.3, 5 & 7 against the plaintiff. Consequently, the learned Trial Court dismissed the suit. The judgment and decree passed by the learned Trial Court dismissing the suit came to be confirmed by the First Appellate Court. By the impugned judgment and order the High Court has allowed the Second Appeal preferred by the original plaintiff. The High Court framed the following substantial question of law:

F “Whether the findings or judgment and decree passed by the Court below are a result of complete misreading, misinterpretation of the evidence and material on record and against the settled position or law?”

G Holding aforesaid question of law in favour of the plaintiff the High Court without even considering the issue with respect to the limitation has allowed the Second Appeal and has quashed and set aside the concurrent findings recorded by both the Courts below and consequently has decreed the suit.

H 2.3 Learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case the High Court has committed a very serious error in allowing the Second Appeal and quashing and setting aside the concurrent findings recorded

by both the Courts below which as such were on appreciation of evidence on record. A

2.4 It is submitted that the Hon'ble High Court has not properly appreciated the fact that as such the road in question was constructed in the year 1987 and that too with the help and consent of the plaintiff and that at no point of time till 2002, he made any grievance even with respect to non- payment of the compensation. It is submitted that in the deposition the plaintiff witnesses including the plaintiff have specifically admitted that the road in question has been constructed in the year 1987. It is submitted that for the first time in the year 2002 the plaintiff in a representation to the Chief Minister made a grievance with respect to non-payment of the compensation. It is submitted that therefore when on appreciation of evidence on record both the courts below held that the suit was barred by limitation, the High Court has committed an error in interfering with the said findings in exercise of powers under Section 100 of the Code of Civil Procedure. B C

2.5 Making above submissions, it is prayed to allow the present appeals and quashed and set aside the impugned judgment and order passed by the High Court and restore the judgment and decree passed by the learned Trial Court dismissing the suit. D

3. We have gone through the impugned judgment and order passed by the High Court as well as the findings recorded by the learned Trial Court confirmed by the First Appellate Court. We have also considered the deposition of the plaintiff witnesses which were elaborately considered by the learned Trial Court. From the deposition of the plaintiff witnesses it can be seen that the plaintiff and other witnesses specifically admitted that the land in question on the land of the plaintiff was constructed in the year 1987. The plaintiff witnesses have also admitted that the retaining wall was constructed on the land of the plaintiff in the year 1987. Even according to the plaintiff and his witnesses the fruit trees were damaged/destroyed in the year 1987. Even the cause of action pleaded in the suit was construction of road in the year 1987. Considering the aforesaid facts and circumstances when the learned Trial Court held that the suit was barred by limitation considering Articles 58 and 72 of the Limitation Act and when the same was confirmed by the First Appellate Court, the High Court ought not to have interfered with the said findings of facts in exercise of powers under Section 100 of the CPC. E F G

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- A 3.1 At this stage, it is required to be noted that it was the specific case on behalf of the defendants that the road was constructed with the help and consent of the plaintiff which is established and proved by the conduct on the part of the plaintiff mainly not raising any dispute till 2002.
- B 3.2 From the impugned judgment and order passed by the High Court and the substantial question of law framed it is to be noted that the High Court has not framed any substantial question of law on the limitation and/or the suit being barred by limitation. The High Court has gone on general and broad principles. However, the High Court has not at all considered the real facts which are narrated hereinabove. Even the
- C substantial question of law framed by the High Court also cannot be said to be a substantial question of law at all. Be that it may the fact remains that the road in question was constructed in the year 1987; the trees, if any, were damaged/removed in the year 1987; the retaining/protection wall was constructed on the land of the plaintiff in the year 1987 and the
- D suit was filed in the year 2003 and therefore the suit was barred by limitation considering Articles 58 and 72 of the Limitation Act, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.
- E 4. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The judgment and decree passed by the learned Trial Court confirmed by the First Appellate Court dismissing the suit is hereby restored.

Present appeals are accordingly allowed. No costs.

Nidhi Jain
(Assisted by : Abhishek Agnihotri and Tamana, LCRAs)

Appeals allowed.