



**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

**RSA No. 60 of 2005.**

**Reserved on : 2<sup>nd</sup> July, 2019.**

**Decided on : 12<sup>th</sup> July, 2019.**

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Smt. Shashi Bala & Anr. ....**Appellants/defendants.**

Versus

Sh. Shankru (since deceased) through his legal heir Smt. Samitra Devi alias Harpreet Kaur  
....**Respondent/plaintiff.**

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**Coram:**

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Appellants:** Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate

**For the Respondent:** Mr. Bhupender Gupta, Sr. Advocate with Ms. Rinki Kashmiri, Advocate.

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**Sureshwar Thakur, Judge.**

The defendants, standing aggrieved, by concurrently recorded verdicts, respectively, by the learned trial Court, upon, Civil Suit No. 139/1 of 1995, and, latter by the learned First Appellate Court, upon,

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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Civil Appeal No. 40-S/13 of 2003, where through, the plaintiff's suit, vis-a-vis, suit khasra number stood decreed, hence, institute the instant appeal before this Court, and, therethrough hence strive their reversal.

2. Briefly stated the facts of the case are that the deceased plaintiff One Shankru had filed a suit for possession of land and house comprised in Khata No.9/51 min, Khasra No.485/268, measuring 7 biswas, situate in mauja Barog, Pargana Bharoli, Kalan, Tehsil and District Solan, H.P. with the allegations that previously the suit property was owned by the plaintiff, who had transferred the same in the name of his wife Smt. Sundri, who had constructed a house subservient to the need of agriculture with respect to her adjoining land in Khata No.10/52 min and, other land. After the death of Smt. Sundri her estate has devolved upon the plaintiff and mutations No.438 and 525 have been attested. The house constructed over Khasra No.485/268 consisted of

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two rooms in the basement and two rooms in the upper side adjoining the Kalka Shimla Highway. The defendant No.1 and Shri Inder Sain Sethi desired to purchase the suit property but being non agriculturist could not do so and some wrong documents was got executed which were resiled with by Smt. Sundri, the then owner and per agreement the house over the suit property was given on rent at the rate of Rs.200/- per month to Smt. Shashi Bala, defendant No.1 and, all the documents executed between Smt. Sundri and Shashi Bala and Inder were treated as cancelled and a sum of Rs.15,000/- paid on 20.07.1980 was agreed to be adjusted towards the rent upto August, 1988. The payment was adjusted and the notice terminating the tenancy was served on the defendants for delivery of the vacant possession of the house on or before 1.10.1994. The defendant No.2 Bhagat Ram is a relative of defendant No.1 in order to put pressure upon Smt. Sundri filed a suit for injunction

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qua the suit property, on the basis of some fake agreement in which learned District Judge, held the defendant No.2 to be in possession of the suit property and he was liable to be dispossessed in due course of law per judgment dated 13.4.1994, in case No.444/1 of 1989. The agreement was of 1981 whereas there was bar on purchasing of land by non agriculturist by dint of the provisions contained in Section 118 of the H.P. Tenancy and Land Reforms Act. Defendants No.1 and 2 had added 2 rooms more in the said existing construction without the consent of the plaintiff illegally and had no right to remain in occupation of the same and are liable to deliver the vacant and peaceful possession of the house to the plaintiff. Shashi Bala also filed suit No.414/1 of 1988 in the year 1988 against Smt. Sundri for injunction in respect of Khasra No.268/1 to the extent of 2 biswas 9 biswansi out of 7 biswas which suit was decreed partly only with a liberty to recover possession in

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due process of law and appeal against the judgment was filed whereby the suit was remanded on account of the amendment sought. The defendant No.2 had stated that the defendant No.3 was in possession of the part of the property. The plaintiff after reserving his right to recover mesne profits has filed this suit for possession of the suit property.

3. The defendants contested the suit and filed written statement, wherein they have taken preliminary objections qua maintainability, cause of action, resjudicata, misjoinder<sup>4</sup> of defendants No.2 and 3 as parties, valuation, estoppel, acquisition of title by the defendant by way of adverse possession and limitation. estoppel, res judicata etc. On merits, the defendants averred that Smt. Sundri and Shankaru owners of the property had agreed to sell the property in favour of defendants No.1 and 2 by a valid agreement and received consideration. The defendants were owners in

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possession of the suit property. Smt. Sundri had admitted the receipt of consideration before the Tehsildar. Shri Inder Sain Sethi did not agree to pay rent at the rate of Rs.200/- per month to Smt. Sundri and Shankaru. The documents were also not cancelled and validity of the documents was upheld by Senior Sub Judge, Solan. Sh. Bhagat Ram defendant No.2 was an agriculturist and suit regarding 2 bighas 11 biswas land on the basis of agreement and tatima was decreed by Senior Sub Judge, Solan. The suit against Sh. Bhagat Ram cannot be clubbed with the suit against Smt. Shashi Bala as the cause of action were different and sales took place at different times. The sale appertaining to a house which was not subservient to agriculture and the plaintiff was not entitled to take advantage of H.P. Tenancy and Land Reforms Act. There was no relationship of landlord and tenant between the parties, and, the possession of the

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defendants was also not unlawful. The suit was hit by Section 11 and Order 2, Rule 2 CPC.

4. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:-

1. Whether the plaintiff is owner in possession of the suit land, as alleged?OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the suit of the plaintiff is hit by principles of resjudicata?OPD
4. Whether the suit is bad for misjoinder of parties?OPD.
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD.
6. Whether the plaintiff is estopped from filing the suit as alleged?OPD.
7. Whether the defendants have become owners of the land by virtue of adverse possession?OPD.

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8. Whether the suit is barred by limitation?OPD. ◊

9. Relief.

6. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court decreed the suit of the plaintiff/respondent herein. In an appeal, preferred therefrom, by, the defendants/appellants herein, before the learned First Appellate Court, the latter Court dismissed, the, appeal, and, affirmed the findings recorded by the learned trial Court.

7. Now the defendants/appellants herein, have instituted the instant Regular Second Appeal, before, this Court, wherein they assail the findings, recorded in its impugned judgment and decree, by the learned first Appellate Court. The appeal stands admitted by this Court, on the following substantial questions of law, respectively framed, on, 3.6.2005, and, on 10.12.2018:-

1. Whether bar of provisions of Section 118 of the H.P. Tenancy and Land Reforms Act has not been put to trial in accordance with law and findings are vitiated and whether in the present case property in suit being built up therefore no prior permission from State Government of Himachal Pradesh was required to be obtained?
2. Whether the appellant is entitled to the protection as contained in Section 53-A of Transfer of Property Act as held in 2002(3) SCC Page 676?
3. Whether respondents having set up plea of tenancy against appellant No.1 and in view view of the fact that PW-1 has deposed nothing as to when and between whom the alleged tenancy was created, therefore, in the absence of any agreement for creation of tenancy claim of the respondent was required to be rejected and disbelieved and for want of termination of tenancy suit merit dismissal?

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4. Whether the present suit is not maintainable on account of joinder and non joinder of necessary parties and because of different causes of action and the suit in question is not maintainable on account on principle of resjudicata as well as estoppel.?

**Substantial questions of Law No.1 and 2 :**

8. In, a, previous suit, inter se, the extantly contesting litigants, rather conclusive, and, bindings judgments, and, decrees, stood rendered, vis-a-vis, the suit khasra number(s), hence, bearing similarity, vis-a-vis, the extant suit khasra number, (i) judgments and decrees whereof, stand, borne in Ex.PW1/J, in Ex.PW1/K, and, in Ex.PW1/L, (ii) and, they make unfoldments, vis-a-vis, the agreement, of, sale executed inter se the executants thereof, respectively borne, in, Ex.PD, standing pronounced to be void, (iii) and, upon its attracting, the, statutory bar contemplated in Section 118 of the H.P. Tenancy, and, Land Reforms Act, (iv)

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whereupon, the afore conclusive pronouncement(s), vis-a-vis, the afore facet, recorded, inter se, the contesting litigants, inevitably constrain, a conclusion from this Court, that, the substantial of law No.1, framed, with respect to the statutory bar encapsulated, in, the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act, being not amenable, for, being re-decided, (v) given, the afore conclusion, vis-a-vis, the conclusivity, and, binding effect(s), of, an earlier pronouncement recorded, vis-a-vis, the invalidity of the apposite agreement sale, hence, sparking thereon, rather, the requisite statutory bar of estoppel, and, (vi) given, whereupon, rather the solemn statutory principle of estoppel, created by the underlying therewith principle, of, constructive res judicata, being rendered both negated, as well, as being hence deprived, of its, apt legal efficacy.

9. Even though, the substantial question of law appertaining, to acquisition of rights, in the suit property by the contesting litigants, on anvil of mandate, of, Section 53-A, of, the Transfer of Property Act, (i) even if assumingly, they, upon, the earlier verdicts, were, declared to be entitled, for, a, rendition, of, decree of permanent prohibitory injunction, (ii) and, also hence when they rather stand declared, to be, in possession of the suit property, (iii) rather the mere validity, of, the, afore renditions, made, vis-a-vis, the defendants, cannot per se hence also bestow, upon, them, the benefits, of, the afore provisions, rather validities, vis-a-vis, the afore espousal, is to be determined, along with the afore faceted hence conclusive, and, binding pronouncement recorded, in the earlier verdicts, (iv) and, rather, wherethroughs, the afore apposite agreement to sell, vis-a-vis, the suit land, and, borne thereat, in Ex.PD therein, hence stood declared to be nonest, its, infracting the

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mandate, encapsulated in Section 118 of the H.P. Tenancy, and, Land Reforms Act, (iv) and, the necessary concomitant sequel thereof, is, that the principle embodied in Section 53-A, of, the Transfer of Property Act, though attractable, vis-a-vis, the defendants, upon, theirs holding possession, of, the suit property, (v) yet the afore principle being abridged, with a rider, qua, it operating only, upon, the entire commercial transaction(s) being declared valid, (vi) whereas, with the apposite sale agreement, standing pronounced to be null, and, void, and, further when, in the earlier judgment, the aggrieved therefrom rather, the, plaintiff herein, is reserved, with a right, to, in accordance with law, hence, seek recovery of possession of the suit property, (vii) thereupon, he is entitled to a decree for possession, rather of, the suit property, (viii) given, the agreement to sell, being ingrained with a legal malady, reiteratedly, whereupon, the aggrieved defendants, are, forbidden to

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stake a claim hence anchored, upon, the mandate borne in Section 53-A, of, the Transfer of Property Act, (ix) especially when any valid anchorage(s) thereon, necessitate(s) qua the apposite agreement, hence, holding legal force. Consequently, substantial questions of Law No.1, and, 2 are hence answered in favour of the respondent/plaintiff, and, against the defendants/appellants.

**Substantial question of law No.3 and 4.**

10. The learned counsel, appearing for the appellants has contended with much vigour, before this Court, (i) that for want of, a, scribed agreement, hence, creating therethroughs any tenancy, vis-a-vis, a portion, of the suit property, (ii) thereupon, both the learned courts below were interdicted, to record a finding, that, the aggrieved defendants, rather assuming tenancy rights, vis-a-vis, the suit property nor hence, it was amenable, for the learned Courts below, to, through

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theirs, concurrently recorded verdicts, hence accept the notice borne in Ex.PW1/C, and, Ex.PW1/D, notices whereof, stand, evidently served, upon, the defendants, under, postal receipts, borne in Ex.PW1/E-1 to Ex.PW1/E-3, (iii) besides through postal certificate, borne in Ex.PW1/E-1 to Ex.PW1/E-3. Since, the afore notices, wherethrough, the tenancy of the aggrieved defendants, hence, stood terminated, rather are evidently proven, to be, served, upon, the latter, (iv) and, when the defendants also permitted exhibition marks being made thereon, besides when the reflections in the jamabandi, appertaining, to the suit land, and, borne in Ex.PW1/B, make clear palpable disclosure, vis-a-vis, the plaintiff/respondent herein standing recorded therein, to be owner, in possession, of the suit property, (v) besides when the earlier conclusive, and, binding verdicts, respectively borne, in Ex.PW1/J to Ex.PW1/L, reserving a right, in the plaintiff/respondent, to recover, through, the

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processes of law, rather possession of the suit property, (vi) thereupon, merely for absence of recording or execution, of, scribed agreement(s), of tenancy, inter se, the contesting litigants, rather do not forbade, both the learned courts below, to discard or reject the probative vigour, of, the afore exhibits, (vii) rather reiteratedly when the counsel for the defendants permitted, the embossing of exhibition marks thereon, (viii) and, when hence the recitals borne therein, are obviously construable to be admitted by the defendants, (ix) thereupon, it stands formidably concluded, that dehors, any scribing, of, any tenancy agreement, inter se, the contesting litigants, rather the afore exhibits, abundantly proving, the, coming into being, of, an oral, and, implied tenancy, vis-a-vis, the suit property, and, the returning, of, findings, vis-a-vis, oral, and, implied tenancy hence coming into being, inter se, the contesting litigants, vis-a-

vis, the suit property, hence, by both the learned Courts below, rather, not warranting, theirs being disturbed.

11. The learned counsel appearing, for the aggrieved defendants, has made, a vehement submission before this Court, (i) that, the joinder of multifarious causes of action in the extant suit rather being grossly impermissible, (ii) as, all the causes of citation joined in the extant suit, are segregable, and, all the encapsulated causes of action are wholly segregable, and, distinct from each other, (iii) and, when hence all the causes of action, were amenable, for being joined in different suits, whereas, reiteratedly, all being joined in the extant suit, (iv) rather rendered the instant suit, to be, mis-constituted, and, the rendition, hence by both the learned courts below, of, decree(s) of possession, vis-a-vis, the suit khasra numbers, by both the learned courts below, hence, warranting interference. However, the afore submission addressed, before this Court, by the

learned counsel appearing, for the aggrieved defendants, is, bereft of any vigour, as the suit khasra numbers, are, all embodied in Khasra No.485/268, measuring 0-7 biswas, and, the afore khasra numbers, carries therewithin, different tracts of land, respectively measuring 3 biswas, 2 biswas, and, 2 biswas, 11 biswansi. (iv) Even though, the afore tracts or portion(s) of lands, borne, in, a, common khasra numbers, are, respectively possessed by all the co-defendants. However, also when, the, respective possession(s) thereof, by, all the co-defendants, may be, through different agreements, hence, executed, inter se, the plaintiff, and, the defendants concerned, (v) yet the preeminent fact, which constrains this Court to conclude, that, thereupon, there being no misjoinder of causes of action nor hence any multifarious causes of action, rather being embodied in the plaint, rather the suit being properly constituted, is, encapsulated in (a) the suit

khasra number being common; (b) the afore infirmity, as evident, on a reading of Section 199 of the CPC, provisions whereof stand extracted hereinafter:-

**“99.No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction-**

No decree shall be reversed or substantially varied, nor shall any case be remanded in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

Provided that nothing in this section shall apply to non-joinder of a necessary party.

rather barring the appellate courts, to reverse or substantially vary or remand any lis, (c) reiteratedly on anvil of purported mis-joinder or non-joinder of parties or causes of action, (d) unless, the merits of the case or the jurisdiction of the Court, is, hence, affected. However, since the learned counsel, for the aggrieved defendants/appellant, has not been able, to persuade this

Court that, upon, the afore purported mis-joinings, of causes of action, rather the merits of the case, would be direly affected nor has been able to sway this Court, that thereupon, the jurisdiction of the court hence stands affected, (vi) rather with as aforestated, various tracts of land standing borne in a common suit khasra number, and, when in respect, of the various tracts of land, borne in the common suit khasra number, as, evident, upon, a perusal of, the, jamabandi appertaining therewith, and, as borne, in Ex.PW1/B, rather the plaintiff, is, recorded to be the solitary owner thereof, (vii) whereas, only upon, other persons along with the plaintiff, standing, hence, recorded in, the, jamabandis, as, appertaining to the suit land, as apt co-owners thereof, (viii) thereupon, when the afore, may rather avail, a, ground qua the suit being mis-constituted, hence for his/theirs, non joinders, in the array of co-plaintiffs, rather when, the apposite jamabandis, rather do not, make, the afore upsurgings,

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and, when, for, wants thereof rather the afore espousal, is, hence barred, (ix) and, when the plaintiff is reserved, through, earlier pronounced verdicts, respectively embodied in Ex.PW1/J to Ex.PW1/L, hence, a right to recover possession, of the suit property, and, when hence the instant suit, is not hit, by, the, principle of res judicata, and, rather the afore principle, is working adversarially, vis-a-vis, the defendants/appellants, (x) and, the thereupon, any, joinder of purported multifarious causes of action, in, the extant suit, are rather amenable, for, being clubbed or joined therein, (xi) more so, when hence, it would enable the court, to efficaciously record a verdict, on merits, qua the contesting espousal(s), and, also without the plaintiff being unnecessarily driven, to institute separate suits purportedly, on anvil of, purported multifarious causes of action, being embodied in the plaint.

12. Be that as it may, even otherwise, the mandate embodied, in Order 1, Rule 3, CPC, provisions whereof stand extracted hereinafter:-

“3. Who may be joined as defendants. -All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

rather enshrines (a) that the plaintiff being empowered, to join, in the array of co-defendants, all persons against whom, any right to canvass the relief in respect of, or arising out of, the same act or transaction or series of acts or transactions, are, alleged to exist, (b) and, even if when assumingly, the, various acts or series of acts or transactions, as stand embodied in the extant plaint, do per se, hold apparent interconnectivity, (c) thereupon, and, when, upon, separate suits, being reared, against, the co-defendants concerned, would sequel, the, ill legal

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consequence, of, emanations, of, diverse/conflicting verdicts, despite, common question(s) of fact or law arising, inter se, the contesting litigants, rather, upon, the plaintiff being driven, to institute separate suits, against, the defendants concerned, (d) and, hence, when the mandate, encapsulated in Order 1 Rule 3 of the CPC, is with, a holistic underlying purpose, rather, for avoiding multifariousness, of litigation, and, also for obviating multiplicity(ies) of litigation, and, for avoiding rendition, of, conflicting verdicts, upon, visibly mutual common questions of law, and, with the latter parameter(s) rather being satiated, (d) thereupon, the joining of purported dissimilar or disconjunct causes of action, does not, constrain this Court, to construe, qua the suit being mis-constituted nor this Court would proceeded, to disturb, the concurrent verdicts recorded, by both the learned courts below.

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13. The above discussion, unfolds, that the conclusions as arrived by the learned first Appellate Court, as well as by the learned trial Court, being based, upon a proper and mature appreciation of evidence on record. While rendering the findings, both the learned courts below have not excluded germane and apposite material from consideration. Accordingly, the substantial questions, of law No.3 and 4 are also answered in favour of the respondent and against the appellants.

14. In view of the above discussion, there is no merit in the instant appeal, and, it is dismissed accordingly. In sequel, the impugned judgments, and, decrees are affirmed and maintained. Decree sheet be prepared accordingly. All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

**12<sup>th</sup> July, 2019.**  
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**(Sureshwar Thakur)**  
**Judge.**