



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 60 of 2019
Reserved on: June 28, 2025
Date of Decision: July 7, 2025

State of Himachal Pradesh & others	Appellants.
Versus	
Jai Ram	..Respondent.

Coram:
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Whether approved for reporting?¹ Yes
For the Appellant: Ms.Seema Sharma, Deputy Advocate General.
For the Respondent: Mr.C.D. Negi, Advocate.

Vivek Singh Thakur, J.

This appeal has been preferred by the appellants-State, under Section 100 of the Code of Civil Procedure (in short 'CPC') against judgment and decree dated 31.10.2018, passed by Additional District Judge-(II), Shimla, H.P., in Civil Appeal No.34-S/13 of 2016, titled as *State of Himachal Pradesh and others vs. Jai Ram*, whereby judgment and decree dated 24.09.2016, passed by Civil Judge (Junior Division), Court No.2, Rohru, District Shimla, H.P., in Civil Suit No.23/1 of 2009/08, titled as *Jai Ram vs. State of H.P. and others*, has been affirmed.

2. Parties to the *lis*, hereinafter, shall be referred as per their status in the Civil Suit, for convenience.

¹ Whether reporters of the local papers may be allowed to see the judgment?

3. Plaintiff filed the aforesaid Civil Suit for declaration and permanent prohibitory injunction against the defendant-State and its Officers, for declaring that land comprised in Khasra No.498/1, measuring 14 Bigha 12 Biswas, situated in Chak Kuthari, Tehsil Rohru, District Shimla (suit land) was sanctioned to the plaintiff under Nautor Rules vide order dated 20.11.1970, issued by the Revenue Assistant, Competent Authority, under the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter referred to as 'Nautor Rules') and thereafter, Patta was issued to the plaintiff and he was put in possession after depositing Nazrana of ₹730/- in the Government Treasury.

4. Case of the plaintiff is that after putting plaintiff in possession, he cultivated the land and sown different crops.

5. Case of the plaintiff is that he joined Indian Army in the year 1965 and served at different places in India and being in service in the Army, he could not verify entries in the revenue record and he was under impression that relevant entries had already been carried out after necessary attestation of mutation of ownership in his favour.

6. According to the plaintiff, settlement operation in the area was conducted in 1981-1982, but even at that time, despite finding plaintiff in possession, no entry was recorded in favour of the plaintiff despite submitting representation to the Settlement Agency.

7. Further case of the plaintiff is that sanction of the Nautor to the plaintiff was made about more than 30 years back

and after coming to know about the fact that in the revenue record, his name has not been entered as owner in possession, plaintiff made representation to the Revenue Agency to locate his original file of grant of Nautor land to the plaintiff, but inspite of best efforts of the plaintiff, Revenue Agency, did not make any sincere efforts to trace the said file and to conduct inquiry, so as to construe secondary record of grant of Nautor in favour of the plaintiff.

8. Thereafter, plaintiff issued notice under Section 80 of CPC to the defendants. When no action was taken by the defendants, plaintiff was constrained to file the Civil Suit.

9. Suit was contested by the defendants by taking various technical objections with main plea that Nautor, as claimed, was never sanctioned under relevant Scheme to the plaintiff, and had it been sanctioned, there would have been entries in the revenue record and attestation of mutation in favour of the plaintiff. It was reiteration that as no Nautor land was granted to the plaintiff at any point of time, therefore, there was no such entry of allotment of Nautor land in old Jamabandi nor any mutation has been attested in favour of the plaintiff.

10. By filing replication, plaintiff had reiterated his stand taken in the plaint.

11. Plaintiff has examined two witnesses, including him as PW.1 and has placed reliance upon Ex.PW.1/A, examination-in-chief by way of affidavit of Jai Ram; Ex.PW.1/B, Notice under Section 80 of CPC; Ex.PW.1/C to Ex.PW.1/E acknowledgments of

service of notices; Ex.PW.2/A, copy of Misal Band Register; and also Mark Z-1, Z-2, P-1, P-3 copies of letters; and Mark P-2 copy of Jamabandi.

12. Defendants have examined two witnesses, i.e. DW.1 and DW.2 and have produced no document in evidence.

13. After considering material on record, suit was decreed in favour of the plaintiff declaring him owner in possession of the suit land, consequently directing the defendants to incorporate name of the plaintiff in the revenue record and restraining the defendants from allotting the suit land by way of grant or lease any portion of the suit land to any third person.

14. Appeal preferred by the defendants has been dismissed by the Additional District Judge-II, Shimla, H.P.

15. Present appeal was admitted on following substantial questions of law:-

“1. Whether the findings arrived by the Ld. District Judge are against the law and facts on record and contrary to the provisions to the H.P. Nautor Rules, 1968?

2. Whether the Ld. District Judge has misread and misconstrued provisions of H.P. Land Revenue Act?

3. Whether the suit filed by the plaintiff respondent was hopelessly barred and on such ground liable to be rejected straightway?

16. In examination-in-chief of plaintiff placed on record as Ex.PW.1/A, plaintiff reiterated and reaffirmed his stand in consonance with pleadings. In cross-examination, he had stated

that application for Nautor was submitted by him in the year 1969 and Nautor was sanctioned in the year 1970.

17. PW.2-Chunni Lal is Copying Agent, Record Room, Rohru. He has proved on record certified copy of Misal Band Register Ex.PW.2/A with deposition that out of Khasra No.498, measuring 17 Bigha 17 Biswas, land measuring 14 Bigha 12 Biswas, comprised in Khasra No.498/1 situated in Chak Kuthari, Tehsil Rohru, District Shimla, H.P., was sanctioned in favour of the plaintiff as evident from Ex.PW.2/A which is true and correct copy of record brought by him. Record was seen and returned. There is nothing in cross-examination to impeach the credibility of this witness. Contents of Ex.PW.2/A, as stated by this witness, in examination-in-chief, have not been disputed in cross-examination.

18. DW.1-Kuldeep Singh denied the claim of the plaintiff by deposing that suit land was never allotted or granted in Nautor to the plaintiff against Nazrana of ₹730/-. He has expressed his ignorance to the fact that suit land is in possession of plaintiff since 1970 till date. He has also stated that he was not able to identify Khasra No.498/1 and he was not knowing about crop sown by the plaintiff in the suit land.

19. DW.2-Pratap Singh is Kanungo, Circle Tikkar, Tehsil Rohru, District Shimla, H.P. He, in cross-examination, has stated that suit land falls in his circle and new Khasra Number of old Khasra No.498, as per record, is 998/1. he has submitted that there is no record available with the Department with respect to

sanction of Nautor in the year 1970 nor there is any entry in this regard in the revenue record. Though he has stated that plaintiff has filed this suit for occupying Government land unauthorizedly, but in cross-examination, he has admitted that Ex.PW.2/A is certified copy of Misal Band Register, which is record of Government of Himachal Pradesh. He has also stated that record of sanction of Nautor is not kept with him. He has admitted that according to Misal Band Register Ex.PW.2/A, land measuring 14 Bigha 12 Biswas comprised in Khasra No.498/1, i.e. suit land, was sanctioned as Nautor in favour of the plaintiff with further clarification that in Misal Band Register, after sanctioning of Nautor its number is shown in red ink. He has also admitted that in Ex.PW.2/A in red circle 'A' and 'B' there is mention of sanction of Nautor and its number. He has admitted that plaintiff had filed applications for supply of record under Right to Information Act. He deposed that he was not knowing that on raising demand by the Revenue Department, plaintiff had deposited ₹730/- with the Revenue Department.

20. Only document exhibited on record is Ex.PW.2/A which is certified copy of Misal Band Register. In the column of allottee/owner, name of petitioner has been mentioned as Jai Ram Fauji, son of Jewar, Caste Harijan, Sakan Kuthari. There is detail of Khasra No.498/1 in this document alongwith purpose of grant of Nautor for cultivation. In next column, there is entry by the Revenue Assistant, Rohru, about sanction of Nautor in favour of Jai Ram of Khasra No.498/1, measuring 14-12 Bigha on

payment of ₹730/- as Nazrana for cultivation for horticulture purpose. In last column allotment No.152 dated 21.12.1970 has been mentioned under signatures of Tehsildar, Rohru. There is no other material or documents, proved on record, in accordance with law either in favour of plaintiff or in favour of defendants.

21. Learned Deputy Advocate General has submitted that plaintiff has never deposited any Nazrana, as there is no record available in this regard and, therefore, for non deposit of Nazrana, process of grant of Nautor in favour of the plaintiff was not completed and, thus, no Patta was granted to him and there was no question of sanctioning of/attestation of mutation in this regard and putting the plaintiff in possession.

22. To substantiate her submissions, learned Deputy Advocate General, has referred document Mark P-3 produced by the plaintiff himself. She has submitted that documents, which are not exhibited, but marked only, can also be taken into consideration by the Court for adjudicating the matter. To substantiate her plea, she has referred judgment passed by the Supreme Court in ***P.C. Purushothama Reddiar vs. S. Perumal, AIR 1972 SC 608.***

23. Plea of learned Deputy Advocate General is misconceived as in the aforesaid judgment also, reports, which were considered inadmissible in evidence for non examination of Head Constable who had recorded the said reports, were taken into consideration by referring pronouncements in ***Arjuno Naiko and others vs. Madonomohano Naiko and others, AIR 1940, Privy***

Council 153. In the said case, police reports in reference were made by the Government officials, who were not shown to be inimical towards the respondent or his party and reports were recorded during the course of performing official duty by the Head Constable at the time when there was no dispute between the parties. Therefore, this judgment is not applicable in present case.

24. Learned Deputy Advocate General has also referred judgment of the Supreme Court in ***Vimla Devi and others vs. National Insurance Company Limited and another, (2019) 2 SCC 186***, wherein it has been held that if Court did not exhibit the documents, despite appellants referring the same at the time of evidence, then appellants cannot be denied of their right to claim the compensation on such ground as it was nothing but a procedural lapse.

25. In aforesaid judgment also, proceedings before MACT were in reference, and otherwise also the facts are entirely different in present case as in present case, stand of the defendants, as evident from the pleadings in written statement as well as deposition of its witnesses, is that Nautor was never granted to the plaintiff. Whereas, document Mark P-3 refers to allotment of land to the plaintiff as Nautor land vide order dated 20.11.1970 subject to deposit of ₹730/- Nazrana. If this document is considered, as prayed, then it is also contrary to the defence set up by defendants. Therefore, this judgment is also of no help to the defendants.

26. It is settled law that mere marking of an exhibit does not dispense with proof of document as reiterated by the Supreme Court in ***Sait Tarajee Khimchand and others vs. Yelmarti Satyam alias Satteyya and others, (1972) 4 SCC 562.***

27. There is no question of proving the document by placing it on record as Mark P-3, particularly when document has not been placed on record by the defendants, but by the plaintiff. This document does not have the date of issuance but only instead of date only, 'August 1972' has been mentioned in it. There is no signature of the Issuing Authority. This document also does not bear any number or endorsement number. This document appears to be a draft letter. There is no proof that this letter was actually issued or not.

28. Learned Deputy Advocate General has failed to point out that conclusion arrived at by the Courts below is contrary to which of the provisions of the Nautor Rules and in what manner provisions of H.P. Land Revenue Act have been misread and misconstrued by the Courts below.

29. Taking into consideration document Mark P-3, no benefit can be derived by the defendants. It is also apt to record that if this document is taken into consideration, then it demolishes the stand taken by the defendants in their written statement as well as by their witnesses, wherein allotment and sanction of Nautor land has been completely denied. Whereas, this document speaks about sanction of Nautor of suit land to the

plaintiff subject to deposit Nazrana of ₹730/- Therefore, even consideration of this document also goes against the defendants.

30. Though plea has been taken that suit is time barred, but no document or pleadings have been proved on record to substantiate the same. It is case of the plaintiff that immediately after knowing about lapse on the part of the Revenue Authorities, in updating the revenue record, he approached the concerned Authority and when concerned Authority failed to rectify the mistake, he immediately approached the Court by filing this suit. The Courts below have rightly appreciated the material and facts in this regard also with observation that plaintiff was in Indian Army and after putting him in possession, he was continuously cultivating the land and immediately after having knowledge about incorrect revenue entries, he approached the concerned authorities as well as Court well in time.

31. For material available on record preponderance of probability lies in favour of the plaintiff.

32. Substantial questions of law are answered in aforesaid terms.

33. In view of above discussion, there is no merit in the appeal and accordingly appeal is dismissed.

Pending application(s), if any, also stand disposed of.

(Vivek Singh Thakur),
Judge.

July 7, 2025
(Purohit)