

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4436 of 2001 (O&M)

Date of decision : 28.10.2015

Om Parkash and ors.

...Appellants

Versus

Harbant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Chetan Slathia, Advocate for appellants.

Mr. A.C. Jain, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellants-plaintiff are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby suit for declaration to the effect that plaintiff and proforma defendants are owners in possession of equal share of the suit land and the judgment and decree dated 18.12.1992 passed in Civil Suit No.1611 of 1987 was not binding upon them, much less, null and void against the facts and based upon fraud and concealment, has been dismissed, in essence, the judgment and decree of the trial Court dated 12.02.2001 decreeing the suit, has been set aside.

It would be apt to give brief preface of the matter before advertng to the contention of learned counsel for the parties. Balbir Singh

owner of the property, measuring 116 kanals 11 marlas mortgaged the land in favour of Girdhari Lal vide mortgage deed dated 15.07.1996. However, during the subsistence of the aforementioned mortgage deed, Balbir Singh sold the pieces of land in all total vide three different sale deeds in favour of Om Parkash, Mahabir Parshad and Kalu Ram. The details of which are given hereinunder:-

1. Sale deed dated 15.07.1987 for the land measuring 21 kanals 16 marlas in favour of Om Parkash and Mahabir.
2. Sale deed dated 10.06.1988 for the land measuring 48 kanals in favour of Mahabir and Kalu.
3. Sale deed dated 31.01.1989 for the land measuring 46 kanals 15 marlas in favour of Om Parkash and Mahabir.

Harbant Singh-respondent-defendant on 18.07.1996 filed suit against Girdhari for permanent injunction and withdrew the same vide order dated 21.09.1998. Thereafter, he filed second suit i.e. 1611 of 10.10.1987. During the pendency of the aforementioned suit, another civil suit No.332 of 23.04.1988 for permanent injunction, against the present plaintiff, was filed. The same, after contest, vide judgment and decree dated 20.01.1993 was dismissed. In the aforementioned judgment and decree, the stray entry of khasra number for the Rabi Crop 1985-1986 was disbelieved. The appeal filed against the same and as well as suit vide order dated 29.04.1993 was withdraw. During the pendency of the civil suit No.1611 of 1987, Harbant Singh gave up Balbir Singh by suffering a statement on 30.08.1990. The same reads thus:-

“Present:- Shri Manphool Singh, Advocate for the

plaintiff.

*Shri H.C. Monga, Advocate for defendant
Nos.2 and 4.*

*Counsel for the plaintiff given up the
defendant No.1. Statement to this effect is being recorded.*

*To come upon 05.10.1990 for filing of written
statement and reply.”*

And the statement to this effect was also recorded on the same date.

Remaining defendant Nos.2 to 4 were also given up, in essence, there were no defendants in the suit, after suffering of the aforementioned statement, yet the trial Court vide judgment and decree dated 18.12.1992, decreed the suit by granting the injunction by holding that he could not be dispossessed except in due course of law. It is the said suit, which has been challenged by the appellants-plaintiff claiming the declaration.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Chetan Slathia, Advocate submits that it is in these circumstances the aforementioned suit was filed for the reasons that appellants-plaintiff had acquired the ownership of the land vide aforementioned three sale deeds. Even one sale deed i.e. 15.07.1987 was prior to the filing of the suit No.1611 of 1987. He further submits that trial Court on the basis of the oral and documentary evidence, much less, case law found that Harbant Singh had played fraud upon Court on obtaining the injunction only. In fact once there were no defendants in the suit the best way for trial court was to permit the Harbant Singh to withdraw the suit with permission to file fresh suit as and when cause of action accrues. Even otherwise, during the

pendency of the civil suit No.1611, another suit dated 23.04.1988 for injunction against the present plaintiff was filed which was dismissed vide judgment and decree dated 20.01.1993. After judgment and decree passed in civil suit No.1611 and the same was withdrawn, Harbant Singh was playing hide and seek with the Court, much less, indulged into forum shopping. Even the possession of the land was also with the appellants-plaintiff and this fact finds mention in the judgment dated 29.01.1988 which has merged in the order of withdrawal of the appeal as well as the suit, therefore, the respondent-defendant-Harbant Singh concealed the factum of the aforementioned decree vis-a-vis the possession from the notice of the Court.

He further submits that following substantial question of law would arise for determination:-

1. As to whether the suit would lie against the defendants who had been given up and the trial Court could have passed the decree in such a situation or not?

Mr. A.C. Jain, learned counsel appearing on behalf of respondents-defendants submits that against the judgment and decree dated 18.12.1992, the plaintiff filed objection which was dismissed and the revision filed in this Court entailed into dismissal. Even the objection so filed was dismissed vide detailed order dated 06.07.2000 (Ex.D7) passed in CR No.952 of 1999.

He further submits that injunction is sought as and when cause of action arises and, therefore, nothing prevents the appellants-plaintiff to seek possession in accordance with law. He further submits that respondent-defendants is in continuous possession of the property and, therefore, has

been dispossessed in the year 1995 and rightly so ordered for restoration. There is no illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises.

I have heard learned counsel for parties and appraised the paper book.

It is a matter of record that except stray khasra girdawari entry for the Rabi Crop 1985-86, there is no other entry in favour of Harbant Singh to show the alleged possession. Even such entry has been rectified vide order dated 27.09.1988 passed by Assistant Collector, Second Class, Rania, which had attained finality. A person on the basis of the entry cannot seek injunction in the manner it has been done. During the pendency of the civil suit No.1611 of 10.10.1987, respondent-Harbant Singh instituted another suit dated 23.04.1988 and suffered a decree against him dated 20.01.1993. In the said judgment and decree, there is a categorical finding that he had not been found in the possession and the khasra girdawari entry for Rabi 1985-86 was disbelieved. The aforementioned judgment and decree was assailed by him by filing the appeal before the first Appellate Court but however on 29.04.1993, suit and as well as appeal was withdrawn. However, in order to hoodwink the court, by giving up Balbir Singh and by suffering statement referred above and as well as defendant Nos.2 to 4, much less, withheld the aforementioned judgment and decree. It is the said decree which has been assailed by the appellants-plaintiff in the present suit.

The lower Appellate Court in my view erroneously and fallaciously straightway decreed the civil suit No.332 of 1988 inasmuch as that the entire gamet/genesis of the judgment revolves around that the sale

deeds dated 15.03.1988 and 31.01.1989 were allegedly hit by Doctrine of lis pendens as the suit dated 10.10.1987 was pending adjudication.

In my view, the aforementioned findings would not have any bearing on the decision of the suit for the reasons it was a simpliciter for injunction and not for declaration. The claim of the Harbant Singh in suit No.1611 was on the basis of the tenancy and not on the basis of ownership or any title, thus, the provision of Section 52 of Transfer of Property Act, in my view, would not be applicable.

Harbant Singh has indulged into forum shopping by hoodwinking the Court in concealing all the proceedings and intentionally give up all the defendants who were defendants in the judgment and decree dated 20.01.1993, in essence, he camouflaged the pendency of the civil suit No.1611 from the notice of the appellant-plaintiff herein and defendants therein. The dismissal of the objections pales insignificant for the reasons, that judgment and decree dated 18.12.1992, has been assailed by filing the suit.

The trial Court in my view was of the correct view that once all the defendants were given up, in essence, there was no cause of action subsisting in favour of Harbant Singh and should not have pondered upon to decide the suit by passing the decree, instead would have given a liberty to file a fresh suit as and when cause of action accrues. The factum of giving up of defendant Nos.2 to 4 would be evidenced from the memo of parties of the judgment and decree dated 18.12.1992, which reads thus:-

“Harbant Singh son of Shri Ishar Singh son of Shri Kaku Singh, resident of Village Balasar, Tehsil and District

Sirsa.

...Plaintiff

Versus

1. Balbir Singh son of Chaggar Singh son of Waryam Singh resident of Village Balasar, Tehsil and District Sirsa presently residing at Village Harika, Tehsil Muktsar, Distt. Faridkot.

2. Girdhari son of Shri Pat Ram son of Jodha.

3. Mahabir son of Chain Sukh son of Birbal 4. Om Parkash son of Girdhari son of Pat Ram, all residents of Village Balasara Tehsil and District Sirsa.

...Defendants

Suit for permanent injunction

Present:- Shri Karan Chand, Advocate for the plaintiff.

Defendants No.1, 4 already ex parte

Defendant Nos.2 to 4 given up.”

In view of aforementioned findings, question of law as noticed above is answered in favour of appellants-plaintiff and against the respondent-defendants.

Resultantly, the impugned judgment and decree of the lower Appellate Court is set aside.

The appeal is accordingly allowed.

Judgment and decree of the trial Court is restored.

28.10.2015

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**(AMIT RAWAL)
JUDGE**