

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

RSA No.229 of 2012 (O&M)

Date of decision : 24.04.2015

Piara Singh

...Appellant

versus

Gurmukh Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tribhawan Singla, Advocate
for the appellant.

Mr. Ramesh Sharma, Advocate,
for respondent No.1.

RITU BAHRI , J. (Oral)

This Regular Second Appeal has been preferred by the defendant No.1-appellant against the judgment dated 12.10.2011 passed by the District Judge, Jalandhar, dismissing his appeal against the judgment and decree dated 16.01.2010 passed by the Civil Judge (Junior Division), Nakodar, whereby the suit filed by the plaintiffs-respondent Nos. 1 and 2 has been decreed.

Gurmukh Singh and Harbhajan Singh-plaintiffs filed a suit against Piara Singh, Pritam Singh, Gurmit Singh, Surinder Singh and Baljinder Singh-defendants seeking decree of declaration to the effect that the exparte judgment and decree dated 28.04.2001 passed by Smt. M.K. Bedi, Civil Judge (Junior Division), Nakodar, in Civil Suit No.569 of 1996 titled as 'Piara Singh Vs. Pritam Singh and others' was null, void and illegal with consequential relief of permanent injunction restraining defendants No.1 and 2 from getting the said decree implemented/executed in any manner. As per plaintiffs, Piara Singh-defendant No.1 (appellant) had filed

the above said suit i.e. Civil Suit No.569 of 1996 on 24.06.1996 against seven defendants i.e. Pritam Singh, Gurnam Singh, Gurmukh Singh, Harbhajan Singh (present plaintiffs), Gurmit Singh, Surinder Singh and Baljinder Singh seeking relief of declaration to the effect that he (Piara Singh) was owner in possession of land measuring 4 Kanals being 80/204 share of land measuring 10 Kanals 4 Marlas and defendant No.1 was owner in possession of the land measuring 6 Kanals 5 Marlas being 125/835 share out of land measuring 41 Kanals 15 Marlas on the basis of agreement of exchange dated 20.08.1987 and the alleged decree dated 09.03.1996 passed by the Court of Sh. Manjinder Singh, Civil Judge (Junior Division), Nakodar in Civil Suit No.72/95 titled as 'Gurnam Singh Vs. Piara Singh' was null and void. During the pendency of said suit, on 03.02.1997 a statement was made by the plaintiff party through Sh. Satish Kumar Rajput, Advocate, that they did not want to proceed with application under Order 6 Rule 17 CPC. He also gave statement that the suit might be dismissed as withdrawn against defendant Nos.2 to 7. Accordingly, an order was passed on 03.02.1997, thereby dismissing the suit against defendants Nos.2 to 7. However, later on while deciding the said suit, the Civil Judge (Junior Division), Nakodar, had passed an exparte decree against all the defendants, including defendant Nos.2 to 7 against whom the suit had already been dismissed as withdrawn on 03.02.1997. It was stated that once the suit had already been dismissed against defendant Nos. 2 to 7, the same could not be decreed against those defendants.

Upon notice, defendant No.1 filed a separate written statement and took preliminary objections with regard to maintainability, cause of action, locus standi and mis joinder of necessary parties. It was submitted

that since no decree had been passed against the plaintiffs (respondent Nos. 1 and 2 herein), therefore, they could not challenge the same. The suit has been filed with mala fide intention and that the alleged decree passed in case 'Gurnam Singh Vs. Piara Singh' was the result of fraud played upon the Court and the same was not binding against the rights of defendant No.1. On merits, filing of suit No.569 titled 'Piara Singh Vs. Pritam Singh' decided on 24.09.1996 was admitted. It was also admitted that the application under Order 6 Rule 17 CPC was withdrawn and the suit against defendant Nos.2 to 7 was withdrawn as no relief was claimed against them. Declaration was sought on the basis of exchange between Piara Singh and Pritam Singh, but decree dated 09.03.1996 in Civil Suit No.72/95 was not challenged. Even otherwise that decree was not binding against the rights of defendant No.1 as he was not a party to that suit. It was further submitted that no decree was sought against the present plaintiffs.

Defendants Nos.3 to 5 filed separate written statement, wherein it was submitted that neither they were parties to the civil suit No.569 of 1996 nor they are affected by the said decree. They had got no interest in the same. It was further stated that Piara Singh-defendant No.1 became owner in possession of the disputed land on the basis of an exchange, which had taken place between Piara Singh and Pritam Singh, his brother, and defendant Nos.3 to 5 have got no concern with the same.

From the pleadings of the parties, following issues were framed by the trial Court:-

(1) Whether the plaintiffs are entitled to the relief of decree of declaration as prayed for ? OPP

(2) Whether the plaintiffs are entitled to the relief of permanent

injunction as prayed for ? OPP

(3) Whether the plaintiffs have got no locus standi and cause of action to file the present suit? OPD

(4) Whether the suit is not maintainable? OPD

(5) Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit of the plaintiffs-respondent Nos. 1 and 2. The lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

Gurmukh Singh and Harbhajan Singh-plaintiffs (respondent Nos.1 and 2 herein) filed the present suit challenging the judgment and decree dated 28.04.2001 passed in Civil Suit No.569 of 1996 titled as 'Piara Singh Vs. Pritam Singh and others'. In that suit, Piara Singh (present defendant No.1) had sought a decree for declaration that he was owner in possession of land measuring 4 Kanals being 80/204 share out of total land measuring 10 Kanals 4 Marlas and defendant No.1-Pritam Singh was owner in possession of land measuring 6 Kanals 5 Marlas being 125/835 share out of land measuring 41 Kanals 15 Marlas on the basis of the agreement of exchange dated 20.08.1987. However, during the proceedings of the trial, a statement was made by plaintiff-Piara Singh, through his counsel that they did not want to proceed with the application under Order 6 Rule 17 CPC and that the suit may be dismissed as withdrawn against defendant Nos.2 to 7. Accordingly, the suit was withdrawn qua defendants No.2 to 7 on 03.02.1997. However, at the time of final stage on 28.04.2001, the said suit was decreed exparte against defendants No.2 to 7 also, against whom it had already been dismissed as withdrawn on 03.02.1997. Aggrieved against the

said judgment, Gurmukh Singh and Harbhajan Singh-plaintiffs have filed the present suit for declaration that the judgment and decree dated 28.04.2001 passed in Civil Suit No.569 of 1996 was not binding against them as the said suit had already been withdrawn by the plaintiff (Piara Singh) against them on 03.02.1997.

After going through the impugned judgments, this Court is of the view that the suit of plaintiffs-Harbhajan Singh and Gurmukh Singh has been rightly decreed by the Courts below after appreciating evidence in the right perspective. No illegality, much less perversity has been found in the impugned judgments passed by the Courts below.

No substantial question of law arises for determination.

Dismissed.

April 24, 2015
ps-I/ajp

(RITU BAHRI)
JUDGE