

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

**RSA No.41 of 2013 (O&M)
Date of decision: 09.02.2015**

Jagmohan Singh and others

... Appellants

Vs.

Amrik Singh and another

... Respondents

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. S.N.Chopra, Advocate and
Mr. Rakesh Chopra, Advocate
for the appellants.

Mr. V.M.Gupta, Advocate
for the respondents-caveators.

AMIT RAWAL J.

The present regular second appeal has arisen against the judgment and decree dated 03.09.2009 of the trial Court and judgment and decree dated 15.10.2012 of the lower Appellate Court, whereby, the suit for permanent injunction of appellants-plaintiffs filed against the defendants-respondents-counter claimants, their agents, servants, supporters etc. from interfering into their peaceful possession and from dispossessing them forcibly, except in due course of law, has been dismissed and the counter claim for seeking possession of the suit land filed by the counter claimants-

defendants/respondents has been decreed.

It would be apt to give few facts of the case for adjudication of dispute between the parties to the lis. The plaintiffs had filed the suit for permanent injunction for restraining the defendants, from interfering in cultivating possession of the plaintiff over the suit land measuring 28 bighas 2 biswas, on the ground that one Ram Singh was recorded, as owner in the jamabandis for the year 1974-75. Ram Singh filed a suit bearing No.215 of 15.7.1967 against Sham Kaur and Sarwan Singh, on the ground that the sale deed dated 26.3.1957, alleged to have been executed by him, in favour of Sham Kaur was illegal. The said suit was decreed, vide judgment and decree dated 7.02.1974.

The aforesaid judgment and decree was assailed by Sham Kaur, who, is none else, but mother-in-law of Ram Singh and Sarwan Singh is none else, but step son of Sham Kaur and the same was dismissed, vide judgment and decree dated 26.05.1975, Ex. P-14 and Ex.P-15, on the basis of compromise. As per the compromise, Ram Singh, who is stated to have suffered a statement by abandoning the claim with regard to 28 bighas 10 biswas and quarter of 131 bighas out of total land 159 bighas 2 biswas, Swaran Singh had given up the claim. However, the mutation of the total land measuring 159 bighas 2 biswas was sanctioned, in favour of Ram Singh, as per the judgment and decree passed in his favour in the suit filed by him against Sham Kaur and Sarwan Singh and by virtue

of decree, he transferred the aforementioned land in favour of his sons, namely, Harchand Singh, Norang Singh and Gobind Singh. But prior to the aforementioned sale deed, the aforementioned sons had entered into an agreement of sale in favour of Narata Singh son of Chajja Singh. Narata Singh filed a suit No.345 of 2.11.1981 against the appellants as well as said Norang Singh and others for specific performance, which was decreed and the said decree ultimately attained finality. Narata Singh filed execution of said judgment and decree, vide execution application No.12/12.1.1988 claiming execution and registration of sale deed, much less, sought possession of the suit land. Sarwan Singh, plaintiff is stated to have filed objection petition, claiming himself, to be in cultivating possession of suit land, as tenant. Narata Singh suffered a statement on 12.8.1991 stating that the sale deed in respect of the land had been executed, however, symbolic possession was given and in view of such statement, the execution was consigned to the records being partially satisfied and further separate execution shall be filed.

In pursuance to the receipt of notice in respect of the suit filed by Sarwan Singh, defendants-respondents-counter claimants set up a title by virtue of sale deeds dated 26.03.2003, Ex.P1 and Ex.P2, and claimed possession of the land measuring 28 bighas and 2 biswas and further claimed that defendants have been admitted to be owners of the suit land by Sarwan Singh but the tenancy alleged by the plaintiff was not admitted by them.

On the basis of oral and documentary evidence brought on record, the trial Court found that plaintiff-Sarwan Singh handed over the possession of the entire land, except the suit land to Ram Singh, but it was observed that Ram Singh did not acknowledge plaintiff and Sham Kaur to be his tenant and even that of Sham Kaur. The trial Court further found that since the plaintiff had not claimed any declaration, as such, he cannot be treated as a tenant over the suit land, on the basis of which, he sought injunction and rather found that status of the plaintiff was that of licensee and not that of tenant. While dismissing suit for injunction and decreeing counter claim, trial Court also noticed the other fact that the plaintiff did not appear in the witness box but his son appeared.

Appeal filed by the LRs of Sarwan Singh before the lower Appellate Court also met with the same fate.

Aggrieved from the aforementioned judgments and decrees of the Courts below, the appellants have filed the instant appeal.

Mr. S.N. Chopra, learned counsel appearing on behalf of the appellants contended that both the Courts below have committed illegality and perversity, in dismissing the suit and as well as application for leading additional evidence and amendment of the plaint which was filed at appellate stage, as there had been apparent misreading of the oral and documentary evidence, much less, both the Court below have not addressed/referred certain documents

which ex facie proved the status of Sarwan Singh as Gair Marusi Tenant and therefore, the status of Sarwan Singh cannot be determined/or termed as licensee viz-a-viz, the defendants-counter claimants. He further submitted since Narata Singh did not seek possession of the suit land and therefore, by executing the sale deed in respect of the suit land, counter claimants, defendants cannot seek the possession as it tantamounts to filing second execution application as period of limitation seeking possession had already expired. He further argued that Ram Singh had abandoned his rights in the property measuring 28 bighas 2 biswas, a small chunk in favour of appellant out of the total land measuring 159 bighas 2 biswas, thereafter, Narata Singh had acquired suit land by virtue of judgment and decree dated 23.11.1985 which had attained finality and once, he had lost right to sell the possession, thus, counter claim was not maintainable.

He further argued that both the Courts below have misinterpreted the compromise, which clearly shows that no licence was created by Ram Singh in favour of Sarwan Singh and no specific issue “as to whether Sarwan Singh was as tenant or as licensee” had been framed” and thus, urged that present appeal involves following substantial questions of law to be adjudicated by this Court:-

- i) Whether defendants/respondents could maintain counter claim for possession of the suit property against the original plaintiff Sarwan Singh inspite of the fact that*

the limitation of 12 years for claiming possession under the decree and judgment for specific performance in favour of Norata Singh predecessor of the defendants/respondents had become barred by time?

ii) Whether counter claim for possession of suit property by the defendants is maintainable when once Ram Singh deceased father of the defendants had abandoned his rights of ownership and to recover possession of the suit property in favour of Sarwan Singh plaintiff deceased by way of compromise Ex.P19 in the appeal filed by said Sarwan Singh and another against the decree and judgment passed for possession, in favour of said Ram Singh?

lii) After having thus abandoned, his rights in the suit property vide compromise Ex.P19 and supporting statements made in the Court of learned Additional District Judge Patiala in appeal, whether said Ram Singh could transfer the suit property to his sons through decree?

iv) Whether the defendants/respondents sons of Ram Singh were competent to enter into an agreement of sale in favour of Narata Singh with respect to the suit property after the said abandonment by their father Ram Singh and whether they could execute sale deeds in favour of

the appellants sons of said Sarwan Singh plaintiff with respect to suit property after said abandonment?

iv) Whether on death of Sarwan Singh the original plaintiff, whether his LRs now appellants are competent to take separate defence then the defence taken by said Sarwan Singh in written statement to the counter claim?

v) Whether the trial Court should have asked for written statement from the appellants/LRs of Sarwan Singh the original plaintiff, when the appellants were impleaded as parties in place of said Sarwan Singh?

vi) Whether prejudice has been caused to the appellants/LRs of said Sarwan Singh plaintiff by not calling upon them to file written statement and take their defence?

vii) Whether the first Appellate Court was right in dismissing the application of the appellant for leading additional evidence for producing certified copies of the execution application, order dated 21.2.1991, statements of Narata Singh through counsel, the predecessor of the defendants/respondents by which the application for execution of decree for specific performance got dismissed as partially satisfied vide statement dated 12.9.1991 and order dated 20.8.1991 which was passed by the Executing Court with reference to the statement of

counsel for Narata Sintgh as partially satisfying the decree and consigning the same to record room, copies of which are Annexures P6 to P9.

viii) Whether appellants could have been impleaded as legal representatives on death of said Sarwan Singh plaintiff, in the suit filed by him for permanent injunction restraining the defendants-respondents from interfering in his possession as tenant over the suit property?

ix) Whether the relief of permanent injunction was merely personal to said Sarwan Singh and the right to sue does not survive to the appellants being legal representatives of Sarwan Singh plaintiff and whether the suit had been abated?

x) Whether the impugned judgments are based upon misreading of revenue record in the shape of Jamabandis and the orders passed by revenue officers and on ignoring the same?

xi) Interpretation of compromise Ex.P19 as to whether by Ex.P19 any licence was created in favour of said Sarwan Singh plaintiff by Ram Singh or said Ram Singh abandoned his claim of ownership and possession of suit property?"

Mr. Vikas Mohan, learned counsel appearing on behalf of the defendants-respondents/counter claimants submits that there is

no illegality and perversity in the judgments and decrees of both the Courts below. Both the Courts below have recorded a finding by referring to the oral and documentary evidence, much less, the lower Appellate Court being the last Court of fact and law has also appreciated the entire evidence, much less, no substantial question of law arises to be adjudicated by this Court. He further submits that defendants-counter claimants had acquired ownership in the year 2003 vide Ex.P1 and Ex.P2, therefore, counter claim of the property was maintainable and the suit of the appellants-plaintiffs has rightly been dismissed. In support of his aforementioned contentions, he relied upon the judgment of Hon'ble the Supreme Court in **Man Kaur (dead) through LRs vs. Hartar Singh Sangha and another 2010 (10) SCC 512** to contend that where the plaintiff, who had the knowledge of all the facts, do not step into witness box, adverse inference is liable to be drawn.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below as well as record of the trial Court and am of the view that there is no merit, much less, substance in the aforementioned contentions raised by learned counsel for the appellants, much less, in the appeal and the same is liable to be dismissed, for the following reasons:-

I am in agreement with the contention raised by learned counsel for the defendants/respondents/counter-claimants, that party having not stepped into witness box and supported qua the factual

aspect, of which he had knowledge and opposite party being prevented from putting relevant questions in the cross-examination and agent cannot depose beyond the knowledge of principle, who, actually had the knowledge of facts. In other words, the agent cannot depose and substitute and supplement the knowledge what the principal had. Since, in the instant case, Sarwan Singh, did not step into witness box and only his son had appeared into witness box but his sons had no knowledge of the litigation which Sarwan Singh had with Sham Kaur and Ram Singh i.e. the issue regarding abandoning of the claim by Ram Singh was only in the knowledge of Sarwan Singh and not in the knowledge of the agent i.e. attorney holder.

No evidence had been brought on record by the plaintiff in support of the grounds of appeal that plaintiff was 80 years of age and usually remained ill and was suffering from asthma and blood pressure. The plaintiff could have sought the intervention for examination of Sarwan Singh with the aid/help of a Local Commissioner. Therefore, in the absence of examination, much less cross-examination of Sarwan Singh, the averments made in the plaint had not been proved, except the documentary evidence on record which had been source of the interpretation by both the Courts below as well as of this Court. Sarwan Singh did not challenge the mutation, of entire land, measuring 159 bighas 2 biswas in favour of Ram Singh and thereafter, in favour of his sons who stated to have entered into agreement with Narata Singh for suit

land measuring 28 bighas 2 biswas. The plea, that defendants-counter claimants by virtue of sale deed executed on 26.03.2003 vide Exhibits P1 and P2 could not have sought possession as the relief qua possession had become time barred, is not sustainable as their claim qua possession had not expired as had cause of action to seek possession accrued from the date to the sale deed.

Annexures P6 to P9 sought to be placed on record by way of additional evidence have rightly been rejected by the lower Appellate Court, for, earlier appeal filed by Sarwan Singh and Sham Kaur had been dismissed vide Ex.P15, thus, there was no decree qua abandoning the claim by Ram Singh in respect of the land measuring 28 bighas 2 biswas and on the ground that they were well within the knowledge of the aforementioned document and no reasoning, much less, cause has been shown for not producing and proving the same on record at the time of trial before the trial Court.

No evidence has come on record on behalf of the plaintiff qua payment of lease amount, batai or rent. Entries in the revenue record showing the plaintiff as gair marusi did not defer statue of tenant as revenue record is meant for fiscal purposes only.

The objection raised in the appeal that son Narata Singh failed to seek possession the tantamounts to re-opening the case, i.e., decree for specific performance which had become time barred, much less, which had already attained finality upto Hon'ble the Supreme Court is not sustainable as the suit for specific performance had not been

filed against Sarwan Singh predecessor of appellant.

As regards plea of not framing proper issues, proposition of law on this point is no longer res integra as it is well settled law that when the parties are alive to the situation and lead evidence, non-framing of the proper issue would not entail, the judgment and decree to be perverse and erroneous. In the instant case, the parties were alive to the situation and on the basis of the evidence, the Court had found in the absence of proof of payment of rent and batai, the status of the appellants, who are none-else but the legal representatives of Swaran Singh is/was as licensee and therefore, defendants-counter claimants sought the possession after having acquired ownership by virtue of the sale deed and their licence stood revoked. Pleading qua ownership of alleged tenancy i.e. date, month or year and payment of rent are also conspicuously absent. In the absence of Sarwan Singh having not stepped into witness box, the aforementioned pleadings which were required to be pleaded and proved/remained un-proved and therefore, both the Courts below have rightly declined relief of injunction in favour of the plaintiff. Even otherwise, plaintiff's prayer in suit was not to dispossess in accordance with law and defendants-counter claimants by availing remedy in law sought possession.

Narata Singh had become the owner of the property on the basis of the judgment and decree as well as mutation Ex.P16 and thereafter, he transferred the land in favour of the respondents-

defendants-counter claimants vide sale deed Ex.P1 and Ex.P2. Defendants have taken an appropriate remedy by seeking possession in accordance with law and therefore, the claim of injunction had become the irrelevant.

In view of the reasons given herein above, the substantial questions of law are answered in favour of the defendants-respondents and against the appellants.

No other argument has been raised.

Accordingly, the appeal is dismissed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

February 09, 2015
savita