

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Regular Second Appeal No. 4810 of 2013(O&M)

Date of Decision: February 18, 2015

Ram Kishan

....Appellant

Versus

Patiya Ram & others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present: Mr. Ashish Gupta, Advovcate for Mr. Vikram Singh, Advocate,
for the appellant.

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

Yes

*2. To be referred to the Reporter or not? **Yes***

*3. Whether the judgment should be reported in the Digest? **Yes***

Mahavir S. Chauhan, J.

Having failed to get a favourable decision from learned Civil Judge (Junior Division), Karnal ('trial court', for brevity) and learned Additional District Judge, Karnal ('first appellate court', for brevity), unsuccessful plaintiff (here-in-after referred to as, 'the appellant') is before this Court in regular second appeal.

02. As per appellant's case land measuring 02 Kanals 04 Marlas comprised in Khewat No. 267, Khatauni No.349, Khasra No. 03/02(02-04) was ownership of "*Gram Panchayat Deh Vassi Deh*" but was reserved for "*Gair Mumkin Bara*", was recorded to be in possession of "*Harijan*" community of village Uncha Samana, was divided into twelve "*Baras*" about twenty years back and the "*Bara*" (No. 02) shown in red colour in the site plan (Exhibit P2) (here-in-after referred to as, 'the suit property') had fallen to his share while "*Bara*" (No. 09) shown in blue colour in the site plan (Exhibit P2) had fallen to the share of defendant/respondent No. 01,

Patiya Ram, father of defendants/respondents No. 02 and 03 but the respondents wanted to illegally and by force usurp the suit property whereupon he had planted a “Berī” (jujuba) tree. He had moved a complaint before the police and a “Panchayat” convened by him had observed that he was in possession of the suit property.

03. To contest appellant’s claim, respondents filed a written statement to plead a few preliminary objections and to say that they were in possession of the suit property for the last thirty five-forty years, had grown some trees, and had constructed a cattle shed besides installing a fodder cutting machine thereon and the appellant wanted to dispossess them therefrom.

04. After a replication was filed by the appellant to deny all what was said in the written statement and to reiterate his plea as contained in the plaint, learned trial court, from the pleadings of the parties, identified the areas of conflict in the form of following issues:

1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?OPP
2. Whether plaintiff has no cause of action?OPD
3. Whether suit is bad for misjoinder and non-joinder of necessary parties?OPD
4. Relief.

05. Learned trial court, on appreciation of evidence in the light of submissions made on behalf of the parties, decided issue pertaining to appellant’s claim for a decree of perpetual prohibitory injunction against the appellant by holding that he had failed to prove his possession over the suit property and issues pertaining to absence of cause of action and misjoinder/non-joinder of parties against the respondents as these were not

pressed by them and vide judgment/decreed dated January 13, 2012 dismissed appellant's suit, with no order as to costs, which has been affirmed by the learned first appellate court vide judgment/decreed dated August 01, 2013.

06. I have perused the impugned judgments/decrees in the light of submissions made by learned counsel for the appellant.

07. Learned counsel for the appellant has strenuously argued that the learned courts below have failed to take note of the evidence brought on record by the appellant to prove that the suit land is part of the land measuring two kanals and four marlas which, at the time of consolidation proceedings, was reserved for "*Harijan*" community of the village and to resolve a continued dispute regarding ownership and use thereof, respectables of the community, including Numberdar Bharat Singh (PW2) assembled on December 30, 1982, carved out twelve "*Baras*" and allotted one "*Bara*" each to twelve heads of families of "*Harijan*" community and a writing to this effect was recorded by Numberdar Bharat Singh (PW2) in his book (Exhibit P1). According to him appellant's plea is sufficiently proved in the depositions of Balbir Singh (PW1), Bharat Singh (PW2), Ram Kumar Kamboj (PW4), appellants Ram Kishan (PW3), and documents viz. copy of proceedings of the "Panchayat" (Exhibit P1), site plan (Exhibit P2), copy of Jamabandi for the year 2004-05 (Exhibit P3) and copy of application given by the appellant to the police (Exhibit P4).

07. Nothing more has been urged.

08. Section 36 of the Specific Relief Act, 1963 dealing with "Preventive relief how granted" provides—"Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual."

Section 37 of the Specific Relief Act, 1963 dealing with “Temporary and perpetual injunctions” lays down—“(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908). (2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.”

Section 38 of the Specific Relief Act, 1963 dealing with “Perpetual injunctions” says—“(1) Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”

In Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594 -2008

(3) Civil Court Cases 294 (SC), Hon'ble Apex Court has crystalized the law on injunctions as follows:

“10. On the contentions urged, the following questions arise for our consideration in this appeal:

- (i) What is the scope of a suit for prohibitory injunction relating to immovable property?
- (ii) Whether on the facts, plaintiffs ought to have filed a suit for declaration of title and injunction ?
- (iii) Whether the High Court, in a second appeal under section 100 CPC, examine the factual question of title which was not the subject matter of any issue and based on a finding thereon, reverse the decision of the first appellate court?
- (iv) What is the appropriate decision?

Re : Question (i) :

11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of

plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

13. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of

title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In *Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari* AIR 1965 Mad. 355, the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand, in *Sulochana vs. Narayanan Nair*, 1994 (2) SCC 14, this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed :

"Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit

equally operates as res judicata."

This was reiterated in *Annaimuthu Thevar v. Alagammal*, 2005 (6) SCC 202.

16. This Court in *Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer* 2000 (3) SCC 350, noticed the apparent conflict in the views expressed in *Vanagiri* and *Sulochana Amma* and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in *Corpus Juris Secundum* (Vol.50, para 735, p.229):

"Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title."

In *Vanagiri*, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in *Sulochana Amma* that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy.

Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

09. Appellant's very specific case is that the suit property is part of the land measuring two kanals and four marlas comprised in Khewat No. 267, Khatauni No.349, Khasra No. 03/02(02-04) which is ownership of “Gram

Panchayat Deh Vassi Deh” and at the time of consolidation proceedings was reserved for “*Harijan*” community of the village and a “Bara” out of Baras, carved out of it was allotted to him as recorded in writing, Exhibit P1. No revenue record prior to the year 2004-05 has been brought forth. In the jamabandi for the year 2004-05, Exhibit P3, concededly, village Panchayat is recorded to be owner of the suit property which is described as “*Gair Mumkin Bara*”. No documentary evidence has been brought to my notice from which it could be ascertained that the suit property was allotted to “*Harijan*” community. No proceedings of the village Panchayat or an order passed by a competent revenue authority transferring the suit property in favour of “*Harijan*” community has been made part of the record.

10. Even if it is accepted, though arguendo, that the property, of which suit property is a part, was allotted to “*Harijan*” community, there is no evidence, worth the name, to establish that it was partitioned and suit property fell to appellant’s share. Exhibit P1, a writing dated December 30, 1982 is the “be all and end all” of appellant’s claim. It is only a photocopy. Its original has been withheld. Permission of learned trial court to prove this writing by way of secondary evidence is not shown to be asked for by the appellant or granted by the learned trial court. Ingredients of Section 65 of the Indian Evidence Act, 1872 necessary for admittance of secondary evidence are not shown to exist. The persons in whose presence this writing was “executed” have not been identified, except for Bharat Singh (PW2), who has produced the writing, Exhibit P1. He, however, has revealed that a copy of the writing though was handed over to the police but no such copy was given to him, then how this writing came in his possession has remained unexplained. He has not been able to name others present at the

time of execution of the writing which does not carry signatures or thumbmarks of the persons who witnessed its “execution”. It also does not show which portion was allotted to whom and what was the legal sanctity of the stated partition and the body of persons that partitioned it. Village Panchayat is not shown to be associated with the stated partition nor has it been impleaded as party defendant in the suit. The writing, as noticed by the learned appellate court, does not talk of delivery of possession of the suit property to the appellant. Findings of the learned courts below that the appellant has failed to establish his title to, or possession over, the suit property, thus, cannot be interfered with more so because this regular second appeal is not shown to involve a substantial question of law.

11. For the reasons recorded above, the appeal is found to lack in merit and, as such, is dismissed in limine.

Civil Miscellaneous No. 12943-C of 2013

12. By dismissal of the appeal, this application seeking an interim injunction to restrain the respondents from interfering in appellant’s peaceful possession over the suit property during pendency of the appeal, is rendered infructuous and is dismissed as such.

[Mahavir S. Chauhan]
Judge

February 18, 2015
adhikari