

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

116

Regular Second Appeal No.3383 of 2015 (O&M)
Date of Decision: September 09, 2015

Ravi Chand and others

...Appellants

Versus

Narinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. D.S. Bali, Senior Advocate
with Mr. Parveen Jain, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.8172-C of 2015

Prayer in this application is to implead the legal representatives
of deceased Raghunath Tyagi-appellant No.10.

The details of the legal representative is mentioned in para 2 of
the application. The application is supported by an affidavit.

Prayer made in the application is allowed.

Smt. Shimla Devi, Vijay Tyagi, Amar Tyagi, Bharat Tyagi,
Sunil Tyagi, Rekha Tyagi and Savita Devi are impleaded as legal
representatives of Raghunath-appellant No.10 as prayed for subject to just
exceptions.

CM No.8173-C of 2015

Prayer in this application is to implead the legal representative
of deceased Baijnath Tyagi-appellant No.11

The details of the legal representative is mentioned in para 2 of
the application. The application is supported by an affidavit.

Prayer made in the application is allowed.

Sh. Hari Parkash Tyagi is impleaded as legal representative of Baij Nath-appellant No.11 as prayed for subject to just exceptions.

CM No.8174-C of 2015

Prayer in this application is to implead the legal representatives of deceased Raj Kumar-appellant No.14.

The details of the legal representative is mentioned in para 2 of the application. The application is supported by an affidavit.

Prayer made in the application is allowed.

Vikas Kumar, Gaurav Kumar, Shyamo Devi and Baby are impleaded as legal representatives of Raj Kumar-appellant No.14 as prayed for subject to just exceptions.

CM No.8175-C of 2015

Prayer in this application is to implead the legal representatives of deceased Dayanand-appellant No.17.

The details of the legal representative is mentioned in para 2 of the application. The application is supported by an affidavit.

Prayer made in the application is allowed.

Satish Kumar, Ajit Kumar and Surjit Kumar are impleaded as legal representatives of Dayanand-appellant No.17 as prayed for subject to just exceptions.

RSA No.3383 of 2015

Challenge in this appeal is to the judgments and decree passed by the Courts below by which the suit for permanent injunction restraining respondents-defendants 1 to 3 from making/releasing the payment in respect to acquisition of land as detailed and described in the head note of the plaint in favour of appellants-defendants 4 to 43 as they have ceased to have any

right, title or interest in the aforesaid land with a further mandatory injunction directing the respondents-defendants 1 to 3 to make/release the payment in respect of aforesaid land measuring 4 bighas 3 biswas in favour of the respondents-plaintiffs, stands partly decreed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri and the appeal preferred by the appellants-defendants stands dismissed by the Additional District Judge, Yamuna Nagar at Jagadhri on 27.05.2015.

2. The contention which has been raised by the learned senior counsel for the appellants-defendants is that the Courts below have granted a decree declaring that the respondents-plaintiffs are owners in possession of the land measuring 4 bighas and 3 biswas as detailed and described in the head note of the plaint and the revenue entries in favour of appellants-defendants 4 to 43 in respect of the said land are incorrect and not binding on the rights of the respondents-plaintiffs in any manner cannot be sustained as such a relief was never claimed in the suit. He contends that the suit was for permanent injunction, whereas the decree has been partly granted declaring them to be owners in possession of the said property, which cannot be sustained. In support of this contention, he has placed reliance upon the judgment of Hon'ble Orissa High Court passed in case titled as *Braja Kishore Sahu and others Versus Smt. Sailabala Sahu and others 1995(2) Civil Court Cases 626 (Orissa)*, where it has been held that in a suit for injunction, the question of title cannot be decided and if such an issue arises, the plaint should be amended and no relief can be granted. Reliance has also been placed upon the judgment passed by this Court in *Hans Raj and others Versus Mukhtiar Singh 1996(3) R.C.R. (Civil) 740*, to contend that where a suit for declaration has been filed with no specific claim of

injunction, unless there is a specific claim so made, such relief cannot be granted. On the basis of these judgments, learned senior counsel contends that the judgments and decree passed by the Courts below deserve to be set aside and the appeal allowed.

3. I have considered the judgments passed by the Courts below and having gone through the same, am unable to accept the contention raised by the learned senior counsel for the appellants-defendants in the light of the nature of injunction which has been prayed in the plaint, wherein the respondents-plaintiffs have asserted themselves to be owners in possession of the land in question measuring 4 bighas and 3 biswas and on that basis entitled to the release of payment of compensation amount on the basis of acquisition of the land.

4. Briefly the facts are that the parties to the suit were the joint owners in possession of the land described in the head note of the plaint situated at village Gobindpura, Tehsil Jagadhari, District Yamuna Nagar, which they had inherited from their forefathers. An oral family settlement was arrived at between the parties in the year 1960 and on the basis of the said oral settlement, the respondents-plaintiffs and defendants 4 to 43 became the exclusive owners in possession of the agricultural land. The land which came into possession and ownership of the respondents-plaintiffs measures 4 bighas and 3 biswas as per jamabandi for the year 2002-2003. Defendants 4 to 43 sold their share in the land measuring 20 bighas and 9 biswas to various persons. Some land has been acquired, for which the defendants have already received compensation of land acquired by defendants 1 to 3. The appellants-plaintiffs have neither claimed nor received compensation in respect of their share of acquired

land. Although they are in exclusive ownership in possession as per the oral partition of the year 1960 but the revenue entries were not changed and therein the plaintiffs and defendants 4 to 43 are recorded as co-sharers/co-owners. These revenue entries have been challenged as illegal and not binding on the rights of the respondents-plaintiffs in any manner as the defendants 4 to 43 dishonestly wanted to take compensation for the acquired land of the plaintiffs. The present suit was filed claiming therein a permanent injunction and restraining defendants 1 to 3 from releasing the payment in respect of the land measuring 4 bighas and 3 biswas and for declaration that the respondents-plaintiffs are entitled to receive the compensation and further to direct defendants 1 to 3 to release the payment in their favour.

5. Once they have claimed ownership over the said property along with possession, which is proved to be exclusive in nature in the light of the fact that there was a family partition in the year 1960, which has been acted upon and this fact has been admitted by the sole witness, who had appeared on behalf of respondents namely Dasrath Kumar-defendant No.24 (appellant No.20 herein) as DW-1. He in his cross-examination stated that he and other defendants along with plaintiffs were earlier joint owners of about 35-40 acres of land and when the family partition was effected between the plaintiffs and the defendants in the year 1960, the possession of the land changed hands by exchange amongst the plaintiffs and defendants in accordance with the said partition and the parties continued to cultivate their respective lands now under their possession. He also admitted that the respondents-plaintiffs are in actual possession of the land in question and also admitted the revenue records and entries therein in this regard. He had

admitted that from the date of family partition, all the co-sharers have continued to be separate owners in possession of their respective shares.

6. It is by now settled preposition of law that where in a suit for injunction, the question of title arises incidentally and collaterally, the same can be decided by the Court if there are necessary pleadings and the parties knowingly have led evidence in support of their respective claims. This is a case where the question of title arose incidentally which is simple and straightforward and the Courts have rightly proceeded to decide the same and the findings thus recorded by the Courts on the title of the suit property cannot be said to be not permissible.

7. In the light of the above, findings recorded by the Courts below that the respondents-plaintiffs are owners in possession of 4 bighas and 3 biswas of agricultural land, as has been detailed in the title of the suit and thus the entries reflected in the jamabandi for the years 2002-2003 being wrong and factually incorrect, requiring rectification and thus not binding upon the rights of the respondents-plaintiffs, cannot be faulted with. The respondents-plaintiffs have, therefore, rightly been held to be owners in possession of the land in question prior to the acquisition. The decree, therefore, as passed by the Courts below declaring them to be the owners in possession of the land measuring 4 bighas and 3 biswas as detailed in the head note, does not call for any interference.

8. The judgments relied upon by learned senior counsel for the appellants-defendants in the case of **Braja Kishore Sahu and others'** case (supra) would not be applicable in the present case in the light of admission on the part of the appellants-defendants i.e. Dasrath Kumar DW-1 as the question of title is not in dispute in the present case. The declaration and

injunction, therefore, have rightly been granted.

9. As regards the reliance on the judgment passed in **Hans Raj and others'** case (supra), suffice it to say, the same was in a different set of circumstances and facts, where a suit for declaration was filed with no specific claim for injunction made therein, the Court proceeded to hold that the benefit under Section 37 of the Specific Relief Act cannot be granted. It may further be added that the cause of dispute in the case was the family settlement which was entered into and the issue was whether the document required compulsory registration or not and its admissibility. The said judgment, therefore, would not be applicable to the case in hand. In any case, the settled position in law which has been stated in the said judgment, is that when a relief has not been specifically prayed for in the plaint and the opposite party has not been given an opportunity to meet such a claim, the relief cannot be granted. But in the present case, the plea has been specifically made with regard to the ownership and possession of the property in dispute, which ownership and possession is admitted by the sole witness, who had appeared for the appellants-defendants and, therefore, the decree has rightly been passed by the Courts below, which does not call for any interference by this Court. There are concurrent findings recorded by the Courts below and that too on the basis of admission of the sole witness namely Dasrath Kumar-defendant No.24 (appellant No.20), who had appeared on behalf of the appellants-defendants, which cannot be faulted with.

10. In view of the above, finding no merit in the present appeal, the same stands dismissed.

11. In the light of the dismissal of the main appeal, the applications

i.e. CM Nos.8176-C and 8177-C of 2015 also stand dismissed.

September 09, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE