

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6145 of 2015(O&M)
Date of decision : December 19, 2015

Jasbir Singh

..... Appellant

Versus

Sukhwinder Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
for the respondent-caveator.

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

Amit Rawal, J (oral).

The appellant-defendant is in Regular Second Appeal against concurrent finding of fact whereby the suit for permanent injunction seeking restrain against them and in subsequently amended suit for possession on the ground that respondent-plaintiff had been allegedly dis-possessed during the pendency of the suit on 13.12.2007 has been decreed by the trial court and appeal filed against the same has also been dismissed.

Mr. Sunil Chadha, learned Senior Advocate assisted

by Mr. Chetan Bansal, Advocate for the the appellant has raised the following submissions to contend that the appeal involves substantial questions of law.

i) The suit filed by the respondent is simpliciter suit for permanent injunction, particularly when the appellant-defendant has raised objection viz-a-viz title of the respondent-plaintiff. In the absence of relief of declaration, the suit was not maintainable. In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by L.Rs and others 2008 (2) RCR (Civil) 879** to contend that where the party challenge the title of the plaintiff, plaintiff is required to seek amendment of the suit and having not done so both the courts ought to have dismissed the suit.

ii) Even when the amendment of the suit by incorporating the relief of possession was sought, the plaintiff failed to incorporate the relief.

iii) No court fee as per the provisions of Section 7 (v) of Court Fee Act, 1870 viz-a-viz relief of possession has been paid. Even the court could not have decreed the suit for possession and in this regard has cited the judgment rendered by this Court in **Gulzar Singh Vs. Balwant Singh and others 2014(1) PLR 578, Meenakshi Gupta Vs. Naveen Mahajan 2008 (149) DLT 746** to contend that the suit in the absence of payment of

court fee could not have been decreed.

iv) There is no challenge to the order dated 6.12.2012 passed by the Financial Commissioner, Revenue viz-a-viz entry in khasra girdawari. Had entries in favour of the appellant-defendant been upheld, the sale deeds, six in number, starting from 17.1.2003 to 09.12.2005 have been executed by the appellant-defendant did not envisage passing of the sale consideration, therefore they were not valid in law.

v) Yudhbir Singh brother of the appellant-Jasbir Singh during the pendency of the suit had filed an application under Order 1 Rule 10 CPC for impleadment but the same was not allowed but this Court allowed the revision petition filed by the respondent-plaintiff. However, in SLP bearing No.CC 3468 of 2013 the Hon'ble Supreme Court vide order dated 11.2.2013 while dismissing the SLP observed that rights of the parties could not have been effected in case the SLP filed by Sukhwinder Singh is decreed and thus, prays that the following substantial questions of law arise for determination by this Court:-

- i) Whether the simpliciter suit for injunction, in the absence of decree claiming ownership was maintainable or not?
- ii) Whether the relief of possession in the absence of payment of court fee as per provisions of the Indian Court Fee Act, 1870 was maintainable or not.
- iii) Whether the Courts below could have moulded

the relief of granting possession without calling upon the respondent-plaintiff to pay the ad valorem court fee.

Mr. Sandeep Khunger, learned counsel appearing on behalf of the respondent-plaintiff-caveator submits that the parties to the *lis* were alive to the situation and the issue No.2 with regard to the title of the respondent-plaintiff was framed and in this regard, the respondent-plaintiff had examined the witnesses of the sale deed and even the relief of declaration has not been sought but parties were alive to the situation. In view of the judgment rendered in **P. Purshottam Reddy Vs. M/s Pratap Steels Ltd. 2002 (2) RCR (civil) 70** the court can grant the relief of possession.

He further submits that the respondent-plaintiff had not filed any counter claim or independent suit challenging the sale deed. In the absence of challenge to registered document, it carries a presumption of truth. The court in any change of events or subsequent of events during the pendency of the suit can always mould the relief which the plaintiff is entitled to.

He further submits that even if such a relief has been granted his client is willing to pay ad valorem court fee viz-a-viz relief of possession. In support of his contentions he relies on the judgments in **Tanusree Basu and others Vs. Ishani Prasad Basu and others 2008 (3) RCR (Civil) 519, Meera Chaudhan Vs. Harsh Bishnoi and another 2007 (1) RCR (Civil) 597, Sadhu Singh and others Vs. Thakardawara Bhagwan Narainji 2007 (5) RCR (Civil) 287 and Gurwinder Singh and others Vs. Bawa Singh and**

others 2002 (3) RCR (Civil) 788, Maya Devi and others Vs. Mehria Gram Dall Mill, Balsamand Road, Hissar and others 1987 (1) PLR 647.

He further submits that vide jamabandi for the year 2009-10, Ex.P-5 showed that the respondent-plaintiff is owner in possession of the suit property. Since the respondent-plaintiff was dis-possessed on 13.12.2007, accordingly amendment by seeking relief of possession was incorporated. Sale deeds *ibid* have been executed by Jasbir Singh. All the sale deeds, except one, are subsequent to the family partition Ex. P-18. Having entered into an agreement between the siblings mutation No. 525 dated 19.10.2004 was entered into in favour of Jasbir Singh. However, the said mutation was challenged. Ultimately the Financial Commissioner, Revenue, upheld the title of the respondent-plaintiff. No direct and cogent evidence has come on record to show that Jasbir Singh during the period, when the sale deeds were effected, was insane. He had executed a gift deed which has also not been challenged. The story coined in the written statement that Jasbir Singh shifted to America though he was also elected as member Panch. He remained member of Panchayat from the year 2002 to 2008. Had he been insane he could not have been elected as Panch. The selection could have been challenged on such ground, thus, no substantial question of law arise, much less there is no illegality and perversity in the impugned orders.

I have heard learned counsel for the parties, appraised the paper book as well as the case law cited at bar.

It is now a settled law that where the parties are alive to the situation but no relief or any issue has been framed the court can always grant such relief. In the instant case issue No.2 viz-a-viz title of the respondent was raised which reads as under:-

“Whether the sale deed allegedly executed by the defendant in favour of the plaintiff and his brother is legal and valid?”

It is also a settled law that the relief of declaration is inherent in a suit of declaration. I draw support from the ratio decidendi culled out in **Madan Mohan Vs. Arun Kumar 1984 PLJ 239** . Since the appellant-defendant had not challenged the sale deeds nor set up any counter claim seeking setting aside the sale deed, in the absence thereof, the title of the respondent-plaintiff was not under cloud. The witnesses of the sale deed and the respondent have been examined, no question viz-a-viz passing of the sale consideration has been put in the cross examination. Since the court has moulded the relief by granting amendment viz-a-viz possession as sought by respondent-plaintiff, I am of the view that the court ought to have called upon the respondent-plaintiff to pay the court fee in respect of the property measuring 35 Kanals 4 Marlas. There is no dispute to the ratio decidendi culled out in **Anathula Sudhakar's case (supra)**, as per the facts of the aforementioned case the plaintiff had filed a suit on the basis of mutation whereas the defendant had claimed relief on the basis of sale deed dated 7.11.1977. Whereas, in the aforementioned case the plaintiff claimed titled on 9.12.1968 on the basis of two sale deeds and defendants

also set up title on the basis of sale deed dated 7.11.1977. In the instant case, the defendant had not claimed title on the basis of any documents. There are only six sale deeds which have been executed and registered before the office of Sub Registrar. There is no challenge to the aforementioned sale deeds. As regards the court fee, I am in agreement with the contention of Mr. Sunil Chadha, that the trial court ought to have called upon the respondent-plaintiff to pay court fee once they have forcibly been dis-possessed. There is no doubt the ratio decidendi culled out by the Hon'ble Supreme Court in Gulzar Singh's case (supra) but in the instant case, respondent-plaintiff had sought amendment of the plaint, I am of the view that the court fee viz-a-viz that relief was required to be paid as per the provisions of Indian Court fee Act, 1870 ought to have been paid.

In view of the aforementioned facts, the substantial question of law noticed above is answered against the appellant-defendant and in favour of the respondent-plaintiff and viz-a-viz the question with regard to the court fee is answered in favour of the appellant-defendant and against the respondent-plaintiff.

The impugned judgment and decree is partly modified and respondent-plaintiff is called upon to pay court fee as applicable viz-a-viz claim of possession in respect of land measuring 35 Kanal 4 Marlas.

The appeal is partly allowed.

It is made clear that till the court fee is not paid, the
Executing court shall not proceed with the execution proceedings.

(AMIT RAWAL)
JUDGE

December 19, 2015
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