

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

**RSA No.512 of 2014 (O&M)
Date of decision: 30th January, 2015**

Mohan Lal and others ... Appellants

Vs.

Ajit Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Dadwal, Advocate
for the appellants-plaintiffs.

AMIT RAWAL J.

This regular second appeal is directed at the instance of appellants-plaintiffs against the impugned judgments and decrees of the Courts below whereby the plaintiffs' suit for declaration to the effect that the plaintiffs and respondent No.4 are the owners in possession of the house bearing No.374-A shown green in the colour in the site plan situated at Dr. Bal Krishan Road, Krishan Nagar, Hoshiarpur, measuring 0-4 marlas and seeking restraint by way of permanent injunction, restraining defendants No.1-3 from taking possession of the said house and interfering in any manner in their possession over the said house and in the alternative, suit for possession of the property shown green in colour in the site plan bearing house No.374-A has been dismissed.

Succinctly, the brief facts as culled out from the impugned

judgments and decrees are that the plaintiffs filed the aforementioned suit on the ground that they had purchased the property measuring 4 marlas of land from Parduman Singh, vide sale deed dated 02.05.1988. It has been further stated that one Lachmi Devi widow of Khushi Ram expired and defendant No.4, being daughter of Khushi Ram was her heir. Parduman Singh was owner of land measuring 10 marlas in all out of which he sold 6 marlas bearing house No.B-16/MCH-385 to defendants No.1 to 3 and their father Gurcharan Singh. Gurcharan Singh and defendants No.1 to 3 obtained ejectment orders with regard to the portion of the house No.B-16/MCH-385 against Khushi Ram and Joginder Pal.

It is pertinent to mention here that appellants-plaintiffs are none else but children of Khushi Ram and Lachmi Devi. Plaintiffs further averred that under the guise of ejectment orders, defendants No.1 and 2, and Gurcharan Singh intend to take possession of H.No.B-16/MCH-374-A, owned and possessed by plaintiffs and defendant No.4. It was further averred that plaintiffs and defendant No.4 filed a civil suit for permanent injunction against Gurcharan Singh and defendants No.1 to 3, which was decided on 10.11.1993. In appeal, the suit was withdrawn with liberty to file fresh on the same cause of action and the question of title was kept open and therefore, the present suit claiming declaration had been filed. It was further stated that defendants No.1 to 3 had no concern with the suit property bearing H.No.B-16/MCH-374-A measuring 4 marlas as they

are owners of 6 marlas of land bearing H.No.16/MCH-385 and even the Municipal record also discloses property pertaining to H.No/N-16/MCH-374-A to be recorded in the name of plaintiffs. Defendants had already succeeded in taking possession of the suit property through execution No.7 of 17.2.2007 titled as Ajit Singh vs. Joginder Pal and therefore, prayed for alternative relief of possession.

The said suit was contested by defendants No.1 to 3 by filing joint written statement and it was stated that property in dispute was a part of property No.385 and there is no property bearing No.374-A. Gurcharan Singh and defendants No.1 to 3 had filed the ejectment applications under Section 13 of the East Punjab Rent Restriction Act, 1949 (herein after referred as 'Act') against Khushi Ram father of the plaintiffs. The said premises comprised one varandha-cum-room, store and court yard being on the eastern side of house No.385. The ejectment petition was allowed vide order dated 25.11.1981 and during the execution proceedings, Joginder Pal son of Khushi Ram filed a suit claiming himself to be tenant of the said premises and accordingly an ejectment application was also filed against Joginder Pal, which was allowed vide order dated 12.8.1985 and the appeal preferred against the same was also dismissed vide order dated 6.5.1986. Khushi Ram also filed objection petition to the ejectment order by taking a plea that he was in fact living in house No.374-A which was different from H.No.385. The aforementioned objection petition was dismissed vide order dated

14.10.1996. The plaintiffs did not stop here as Ram Lal-present plaintiff also raised similar objection to the one taken by Khushi Ram which was also dismissed vide order dated 24.11.1988 and the revision petition filed against the order was also dismissed on 15.12.1988. Special Leave Petition was dismissed by Hon'ble the Supreme Court. Thereafter, Khushi Ram filed a present suit for permanent injunction on almost similar grounds taken by plaintiffs, and after the death of Khushi Ram, his legal heirs including the plaintiffs and their mother Lachmi Devi were brought on record. In the aforementioned suit, application seeking grant of temporary injunction was dismissed vide order dated 22.7.1987 and the appeal preferred against the same was also dismissed.

The agony of the defendants did not stop here inasmuch as in the year 1988, the plaintiffs and Lachmi Devi filed another suit for permanent injunction which was dismissed vide order dated 06.05.1989. The revision filed against the same was also dismissed on 06.06.1990. Warrants of possession were issued in favour of defendants No.1 to 3 and the plaintiffs filed revision petition against the said order which was dismissed on 11.7.1990 by this Court and therefore, by giving the checkered history, filing of the present suit was nothing but an act of harassment. Thereafter, the suit filed by Lachmi Devi and plaintiffs was dismissed in default.

The trial Court on the basis of the oral and documentary evidence found that the plaintiffs had filed objections, suit after suit

and even the matter reached upto Hon'ble the Supreme Court and yet filing of present suit was fourth or fifth round of litigation at the behest of the plaintiffs. The trial Court also found that as per the order of the High Court passed in CR No.852 of 1993, this Court had given a concurrent finding that there was no record with regard to H.No.374-A and the entire property was purchased by Gurcharan Singh was bearing number H.No.385. Even the Local Commissioner had also been appointed, who, also gave report that there was no house bearing No.374-A. By noticing the order of the High Court and trial Court came to a concurrent finding that there was no property bearing H.No.374-A. Operative part of the order of the trial Court is extracted herein below:-

“14 Further an abortive attempt was made by counsel for the plaintiffs by placing reliance on the observations made by Hon'ble High Court in Civil Revision No.2825 of 1987 on 22.4.1988 to the effect that DH, Gurcharan Singh was entitled to only 6 marlas of land and no more and that executing Court could not travel beyond the decree. To the dismay of the plaintiffs, this argument had also been raised before Hon'ble Punjab and Haryana High Court in Civil Revision No.852 of 1993 and vide order dated 27.4.2005, already referred above, it was specifically discussed on page No.10 that

arguments, as mentioned above, had no force as the orders dated 22.4.1988 passed by Hon'ble Punjab and Haryana High Court in Civil Revision No.3826 of 1997, which arose out of rejection of a prayer of petitioner for ad interim injunction. Later however, the civil suit itself had admittedly been dismissed. Consequently the interim observation, stood merged in the final judgment. Moreover, the suit had been adjudicated on merits, while observations made on 22.4.1998 were only prima facie. No benefit was given to the present plaintiffs of the observations made in Civil Revision No.3825 of 1987 dated 22.4.1988.

The Special Leave Petition filed by the plaintiffs against the order dated 27.4.2005 passed by Hon'ble Punjab and Haryana High Court in CR No.852 of 1993 was also dismissed and Ex.D5 depicts the same.

Thus, after compounding the afore referred discussions and after going through the contends of order Ex.D3 passed by Hon'ble Punjab and Haryana High Court, it becomes lucid that the subject matter of the present suit, with regard to which the declaration had been sought had been

already adjudicated upon by the Hon'ble Punjab & Haryana High Court in categoric terms. In the light of specific, clear and crisp finding made by Hon'ble Punjab & Haryana High Court, the Court has no hitch in concluding the present suit is barred by principle of res judicata for the reason that the fact that has been already conclusively determined cannot be re-agitate again in a separate Court."

Ultimately, the trial Court dismissed the suit by holding that plaintiffs had filed suit with ulterior motive. The lower Appellate Court being the last Court of fact and law while dealing with the contention of plaintiffs' much less oral as well as documentary evidence brought on record came to the conclusion that there was no house bearing No.374-A except H.No.385 and the plaintiffs made abortive attempt to delay the proceedings though possession was taken in the year 2007.

Both the judgments and decrees of the Courts below has been assailed in the present regular second appeal inter alia on the ground that both the Courts have committed illegality much less perversity in dismissing the suit as well as appeal by rendering one of the finding that suit was barred by principle of *res judicata*. It was also argued that both the Courts below have committed illegality in not referring to the documentary evidence as there was umpteen number of documents to show that there was/is house bearing No.B-

16/MCH-385 and therefore, the ejectment order pertained to house No.385 and could not be extended to house No.374-A.

Mr. K.S.Dadwal, learned counsel appearing on behalf of the appellants in support of the aforementioned contention submits that present appeal involves following substantial questions of law:-

“i) Whether the findings of the Courts below are outcome of misreading and mis-interpretation as well as non consideration of material on record?

ii) Whether the Sale deed dated 2.5.1988 executed by Parduman Singh in favour of appellants proves the ownership over the suit property?

iii) Whether the findings arrived by the Judicial Court concerning to the ownership inter-se between the parties in Civil Suit No.RBT 71 of 93/88 can be ignored?

iv) Whether the Municipal record etc. can be taken into consideration for the purpose of deciding that there exists separate and distinct suit property?

v) Whether the findings arrived at between the Courts in rental proceedings can supersede the finding of civil Court?

vi) Whether the respondent who has purchased approximately 6 marlas can claim the possession

and ownership of 10 marlas merely on the basis of the boundaries given in the sale deed dated 11.8.1977 Ex.D1?

vii) Whether the Courts below under mandatory obligation to scan and scrutinized the sale deed dated 2.5.1988 Ex.P2/A and sale deed dated 2.5.1988 Ex.P2/A and sale deed dated 11.8.1977, Ex.D1 to arrive at fair and just conclusion regarding the identity of the property?

viii) Whether the judgment of the Courts below are liable to be vitiated due to non consideration of material on record?"

I have heard learned counsel for the appellants and perused the impugned judgments and decrees of the Courts below.

After perusing the judgments, I am of the considered opinion that the institution of the suit by children of Khushi Ram is nothing but an attempt to thwart the ejectment orders which though had been executed after the respondents-defendants have faced hardship yet the plaintiffs have not rested their hands, appears to be not only harassing the defendants but is an act of greed much less abberative. This is fourth round of litigation at the hands of the plaintiffs as noticed by both the Courts below. Khushi Ram had instituted a suit for temporary injunction which was declined and even appeal filed thereof was also dismissed. Lachmi Devi and plaintiffs

filed another suit after the entire applications/objections were declined; the same was dismissed in default. Objection petitions were filed by Joginder Pal and Khushi Ram, both were dismissed and after losing from all corners much less the possession having been taken over by the respondents, the present suit had been filed claiming declaration and alternative relief of possession of the property in dispute. Plaintiffs have miserably failed to prove the identity of the property, prima facie, there does not exist a property bearing H.No.374-A. No direct and cogent evidence had been brought on record to link the property bearing No.374-A, alleged to be is separate to one bearing No.385.

Not only this, identity of the property had already been subject matter of adjudication by this Court in earlier round of litigation as noticed by the trial Court that this Hon'ble Court had already given a concurrent finding that there is no property bearing H.No.374-A.

In view of the finding rendered by this Court, there was no occasion by the plaintiffs to re-agitate the matter by filing the suit. It may be noticed here that though the Courts below have dismissed the suit but the manner in which the plaintiffs have filed suit after suit/objection, the Courts below should have imposed the heavy costs on the plaintiffs, in order to prevent them from mis-using the process of law.

Both the Courts below have rightly dismissed the suit of

the appellants-plaintiffs as there is no illegality much less perversity in rendering the findings. No substantial question of law, arises for adjudication of this appeal.

The appeal is, accordingly, dismissed.

While dismissing the appeal and in view of my observation, I am constraint to impose costs of ₹ 50,000/- upon the appellants. Accordingly, the appeal is dismissed with costs, which are assessed at ₹ 50,000/-. The same be deposited with the High Court Legal Services Committee, Chandigarh, within a period of two months from the date of receipt of certified copy of this order and compliance of the same be intimated to this Court.

(AMIT RAWAL)
JUDGE

January 30, 2015
savita