

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

RSA NO.5200 OF 2014 (O&M)
DATE OF DECISION : 15th JANUARY, 2015

Gurmit Kaur & others

.... Appellants

Versus

Nand Kaur & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Ajay Pal Singh, Advocate for the appellants.

* * * *

SURINDER GUPTA, J. (ORAL)

1. Karnail Singh (since deceased), Joginder Singh and Labh Singh
plaintiffs filed suit seeking relief as follows:

“Suit for permanent injunction restraining the
defendants from taking forcible possession of cattle
shed situated at village Balial shown as Mark-A, B, C,
D in the site plan with red colour bounded as:

East : Metalled road Thaman Singh Wala
towards Bhawanigarh 47'-3”,

West: House of Karnail Singh, Joginder Singh,
Labh Singh plaintiffs 44'-6”,

North : Passage leading towards the house of
Karnail Singh, Joginder Singh and Labh
Singh plaintiffs 84’,

South: Barra of Jagdish Ram, Dhira Ram sons
of Chhaju Ram and Karamjit Singh son
of Teja Ram 79'-6".

And from demolishing the above said
cattle shed and room."

2. The suit was dismissed by the learned Additional Civil Judge, Sangrur as plaintiffs failed to prove their possession over the suit property and the appeal filed by legal heirs of Karnail Singh, Joginder Singh and Labh Singh was also dismissed. While declining the relief of injunction Additional Civil Judge (Senior Division), Sangrur in para 19 of the judgment observed as follows:

"19. As far as the evidence brought on record by the plaintiffs is concerned, plaintiffs have failed to prove their case and inspire confidence in the mind of the Court regarding their possession. They have even failed to prove the identification of the property as no khasra number was mentioned by them in the plaint. In the replication, it is alleged that the suit land is part of khasra no.371/1 which is a Mushtarka Malkan land. Being land of Mushtarka Malkan, plaintiffs cannot claim exclusive possession over the same. So, on this ground, plaintiffs are not entitled to seek any injunction against the defendants or any other khewatdar. Demarcation report is not a cogent evidence to prove possession of the

plaintiffs. Moreover, no demarcation was got conducted by the plaintiffs during the pendency of this case through the Court. The demarcation reports placed on record have been prepared in some other proceedings or applications moved by some other persons, not by the plaintiffs. So, these demarcation reports cannot be considered as proof of possession, the revenue record also does not support the case of the plaintiffs. It is settled proposition of law that if both the parties claim possession over the suit land and the plaintiffs fail to rebut the case of the defendants, the plaintiffs are not entitled to any injunction against the defendants. During the course of arguments, the learned counsel for the plaintiffs has laid stress that they are entitled to injunction because they are in settled possession over the suit land and has referred to the certain authorities, but this contention of the learned counsel is without any force because what to talk of settled possession, plaintiffs have even failed to prove their possession over the suit land.”

3. Affirming the findings of Court below, First Appellate Court found that this suit was filed by plaintiffs at the instance of Dhira Ram, who had lost his case against respondents regarding the suit land upto this Court.

The relevant observations as contained in para 11 of judgment of the First Appellate Court are reproduced as follows:

“Previously defendants have filed a suit against Dhira Ram etc. which was decreed in favour of the defendants holding them in possession of the suit land and was upheld by the Hon’ble Court vide judgment dated 06.07.2006 which is Ex. D9 on the file. This suit has been filed by the plaintiffs at the instance of Dhira Ram etc. who have lost their case upto the Hon’ble High Court. The Hon’ble High Court dismissed the appeal on 06.07.2006 which is clear from Ex. D9 on the file. Whereas this suit was filed immediately on 07.08.2006 by the plaintiffs Karnail Singh etc. When the plaintiffs are not owners of the land bearing khasra No.371/1, then they have got no right to claim their possession over the suit property. The plaintiffs are also trying to prove their possession on the basis of reports of revenue authorities. No demarcation was got conducted by the plaintiffs during the pendency of this case. By demarcation reports the plaintiffs cannot challenge the order passed by consolidation authorities. In the demarcation report, the Kanungo is alleging that Director Consolidation has not passed proper order as per spot. However, Kanungo a petty revenue official has no role to challenge the

authority of a senior PCS Office, who had been working as Additional Director Consolidation at the relevant time. When the plaintiffs have failed to prove their possession over the suit property, then this suit for permanent injunction is not maintainable.

4. From the above observation it is clear that plaintiffs did not get done any demarcation of suit land during pendency of the case to prove their possession over the suit property. They relied upon demarcation reports prepared in some other proceedings/applications moved by some other persons and not by the plaintiffs. Both the courts below have committed no error of law or fact while ignoring those reports in proof of possession of plaintiffs over the suit property.

5. Another very relevant fact, which debars the plaintiffs from claiming relief of injunction, is the concealment of facts and not coming to the Court with clean hands. The plaintiffs had relied upon a demarcation report dated 28.07.2006 Ex.P-16 in which the Kanungo reported that khasra no.372(0-8) does not exist and was in fact a part of khasra no.371/1. He also reported that 7 marlas of land out of the above khasra number was in possession of Joginder Singh son of Gurmukh Singh. This suit was filed on 07.08.2006. The plaintiffs deliberately and with ulterior motive, despite having full knowledge of above facts, did not disclose that the suit property is bearing khasra no.371/1. It was not inadvertent mistake but appears to be deliberate one. By filing suit by giving boundaries of suit property and describing disputed property with letters A,B,C,D, the purpose of appellants

was to avoid giving correct description of property and to confuse defendants-respondents with regard to identity of the suit property. At the same time, appellants wanted to avoid producing of revenue record in support of their contention in the event of giving khasra number of the suit property. Admittedly, they did not have revenue record supporting their contention with regard to the identity of the suit property, which they disclose in the replication as bearing no.371/1. The injunction is a relief of equity and a person not coming to the Court with clean hands, is not entitled to this relief. The above principle squarely applies in the case of plaintiffs-appellants.

6. On perusal of paper book and the judgment of both the courts below I find no factual or legal infirmity therein calling for interference. No substantial question of law requiring determination arises and this appeal has no merits, as such, dismissed in limine.

15th January, 2015
'raj'

(SURINDER GUPTA)
JUDGE