

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

RSA No. 660 of 2014 (O&M)

Date of decision: 13.08.2015

Sant Singh and others

... Appellants

versus

Rajesh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kulbhushan Sharma, Advocate for the appellants.

K.Kannan, J.

The plaintiffs who are 5 in number had a joint action for injunction against the defendant claiming that they are tenants in possession of the property for more than 30 years and that occupancy right had enured to them and they had since become owners of the property. They sought for injunction against the defendant on such basis. The defendant who were admittedly the owners from whom the plaintiffs' father was reported to have taken the property in lease denied that the plaintiffs had at any time been in possession of the property and denied further that there was any form of lease between the defendant and the plaintiffs. Of the plaintiff Nos. 1 to 5, plaintiff Nos. 1 to 3 were reported to have given affidavits to the defendants which was produced by the defendant to the effect that plaintiff Nos. 1 to 3 have no interest in the property and they are not claiming any right in respect of the same. The trial Court found that the entry in the name of the deceased father cannot advance the case of the plaintiffs as lessees nor could it fructify as

occupancy right to their benefit. The Court also acted on the affidavit of plaintiff Nos. 1 to 3 as resulting in a proof that the sons did not enjoy the property as tenants at any time. All the plaintiffs preferred an appeal and the appeal was dismissed confirming the trial Court's verdict. The 2nd appeal is brought by the plaintiffs again.

Learned counsel appearing on behalf of the appellants argued that the affidavit filed by plaintiff Nos. 1 to 3 had not been true. In any event the statement of plaintiff Nos. 1 to 3 cannot affect the rights of plaintiff Nos. 4 and 5 to their detriment, for, a right of succession of occupancy right from the father to the son cannot be defeated merely by some of the parties forfeiting the rights. The defendants had even filed a counterclaim for modification of the entries from the entry that stood in the name of the plaintiffs' father to themselves but it was dismissed by the Appellate Court although they were successful at the trial Court. This, according to the learned counsel for the appellant, will show that the Appellate Court while not allowing for modification of entries ought to have allowed for recognition of the plaintiff's right as successor from the father in whose name the entry relating to possession was still being retained.

This case, in the manner of how the plaintiffs have proceeded with the trial, contains a serious flaw in procedure that is bound to affect plaintiffs' interest. If amongst the 5 plaintiffs, three of them had given affidavits disowning rights in the properties and if the affidavits were filed by the defendant through an Advocate who had been present and attested the affidavits, then unless the plaintiff Nos. 1 to 3 themselves

disowned the affidavits by cross-examination denying the signatures or sought for permission from the Court to let in evidence of rebuttal, the statement of plaintiff Nos. 1 to 3 are bound to operate as admissions against the co-plaintiffs as well. While the defendants may have several lines of defences, the plaintiffs have no such privilege. They are bound to have an unified voice and if amongst themselves, if there is any conflict, the only option is to abandon the action with liberty for persons who have independent right to canvass for the same, by a separate suit or seek for a transposition of persons who are affected by statements of co-plaintiffs.

If plaintiff Nos. 1 to 3 would state that they are not in possession of the property and the original pleading was after the death of the father all of them continued in possession as lessees, the statement of plaintiff nos. 1 to 3 ought to be treated as an admission against the other plaintiffs. It will be an untenable argument to make that the statement of plaintiff Nos. 1 to 3 cannot bind the statement of plaintiff Nos. 4 and 5.

It is un-understandable as to how the plaintiffs who are confronted with statement said to have been given by three of them could still join along with the other plaintiff Nos. 4 and 5 to prefer appeals or make even an appeal to this Court. So long as there is no definite stand by plaintiff Nos. 1 to 3 to disown the statement that they had ever given the affidavits or explain why the affidavits had not been disputed at the trial by cross-examination that the plaintiff Nos. 1 to 3 did not execute the document, their conduct will estop them from denying the effect of what the affidavits contained. Even if any suggestion had been omitted to put to the defendants, there was surely an occasion for plaintiff Nos. 1 to 3 to

take the witness stand to deny the statement or explain the statement in whatever manner possible so as not to affect their claim to possession in suit. Their non-examination in Court as parties ought to be a factor against the plaintiffs and I will draw an adverse inference against the plaintiffs for not appearing in Court to give a statement as regards the affidavits.

The suit was incompetent in the manner in which it was framed and the relief of injunction was justifiably dismissed. There is no scope for interference. According to the counsel it is not very easy to discern whether the counter claim was allowed by the decree. I will make no bone out of it, for, it cannot in any way help the plaintiffs.

The second appeal is dismissed and the point of law involved in not required to be framed for consideration in favour of the appellants. Since I have held the point of law against the appellant, there is no scope for notice to respondents.

13.08.2015**kv****(K.KANNAN)****JUDGE**