

211.

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

Civil Revision No.202 of 2013 (O&M)

Date of decision:11.03.2016

Jaspal Singh Kohli and another

... Petitioners

versus

Prabhdeep Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Salil Sagar, Senior Advocate,
with Mr. Sankalp Sagar, Advocate,
Mr. Sunil Kumar, Advocate,
for the petitioners.

Mr. Ajaivir Singh, Advocate,
for respondent No.1.

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

K.Kannan, J. (Oral)

CM No.23659-CII of 2013

Application is allowed, as prayed for. Annexures R1 to
R12 are taken on record.

Civil Revision No.202 of 2013

1. The revision is against the order rejecting a plea by the defendant to frame additional issues relating to the validity of the sale as propounded by the plaintiff. This plea was resisted by the

plaintiff on a contention that the suit is for the bare relief of injunction and the issue of title was irrelevant. The court rejected the plea of the defendant for additional issues, accepting the plaintiff's contention that if at all, the defendant could bring his own counter claim for establishing the title or file his suit for the similar relief or assailing the sale deed in favour of the plaintiff and in the absence of such counter claim or as independent suit, the adjudication regarding title of the plaintiff was unnecessary. The additional issues were, therefore, declined to be framed.

2. The revision is against the order of the court below and the learned senior counsel appearing on behalf of the defendant points out that the suit is brought by the plaintiff for injunction with reference to Plot No.70 on a contention that by virtue of a sale deed dated 07.06.2004, the plaintiff had purchased the said plot from the Sher-E-Punjab Cooperative House Building Society through its office bearer-4th defendant, who was duly authorized by resolution to effect the sale. The contention is that the defendants 1 to 3 are the members of the same society and the society had been formed for the benefit of riot victims of 1984 by securing the property in the name of the society and giving allotments in favour of its members. The contention in defence was that the sale deed in favour of the plaintiff was not true and that it was the outcome of forgery and fraud with the connivance of the 4th defendant. The property, on the

other hand, had been purchased in an extent of about 18 acres and after the formation of the society, Plot No.70 was allotted to one Surjit Singh Sahni and another and the costs of the plot as well as development and maintenance charges had been collected by the society. Surjit Singh Sahni and another, who had the benefit of allotment, transferred through the Share Certificate No.178, Plot No.70 in favour of 3rd defendant and the said transfer was recognized in the year 2001. The allotment letter in favour of 3rd defendant was also said to have been issued by the society and that the 3rd defendant was the lawful owner of the same.

3. The framing of issues in suits are invariably a procedural approach to direct the focus of parties of what are contentious between them. It will be wrong to assume that the issues are to be framed only by looking at the plaint and be completely blindfolded to what the defendants contend. An adjudication is not merely an assessment to what the plaintiff says, but it is an appraisal to what is brought for a consideration by a defence taken to the plaintiff's contention.

4. The counsel for the respondent argues with vehemence the point that was accepted by the court below that in the absence of counter claim or a separate suit, an injunction suit cannot be converted into a title suit. The counsel also relies on a judgment of the Supreme Court in **Ramji Rai and another Versus Jagdish**

Mallah (dead) through LRs and another-AIR 2007 (SC) 900 where the court was holding while considering the issue of interim injunction under Order 39 Rules 1 and 2 CPC that the grant of decree will obtain on proof of possession and the court would not go into the question of title of suit land. Emphasis is also sought to be made through yet another decision of the Supreme Court in **Williams Versus Lourdusamy and another-AIR 2008 (SC) 2212** that spelt out the dichotomy of a suit when a person says he is in possession of land and another when a person says that he has a right to possess. The latter involved an assertion of a right on the basis of which possession was sought and, therefore, the latter suit would alone require the determination of title and not the former.

5. In my view, the decision in **Williams** (supra) truly is the answer to the plaintiff's contention as well. The plaintiff's suit for injunction is not brought merely on an assertion of possession. Possession of immovable property which is vacant follows title. If there is a building, the manner of use of the building itself will constitute the proof of its physical possession. If it is a plot of land which in this case is described as comprising 7 marlas 176 square feet with linear measurement of 32 feet x 65 feet, we are taking about the claim to possession on the basis of a right asserted by the plaintiff through a sale deed dated 07.06.2004. The counsel referred me to the fact that some assessment has been made in relation to his

property. In my view, having regard to the nature of property as vacant and a claim made by the plaintiff that he is the owner of the property by virtue of a sale deed and at the same time contending that the defendants have no right, title or interest over the plot, the court would require to consider the respective claims of the parties to determine who is the person who can show his possession by such assertion of right. In this case, the defence is not merely a denial of the plaintiff's possession. A defence is denial of the plaintiff's right to possess as well, particularly in view of a rival title set up by the two expressions in defence: (i) the sale deed in favour of the plaintiff is forged and product of fraud; (ii) the 3rd defendant is the owner of plot having secured the allotment by transfer of share certificate and transfer from the society.

6. A counter claim is a facilitative provision. The defendant may choose to secure to himself a title in relation to the property or may fend off a threat to their own possession by pointing out that the plaintiff, who claimed possession, has neither right nor possession. In such an event, it is unnecessary for a defendant to be driven to another suit or to compel to sue for counter claim.

7. Having regard to the pleadings of parties which I have examined, I have no doubt in my mind that the prayer that the defendant was asking for framing of additional issues would truly bring out a final adjudication of rights between parties. The suit

must be construed from what the pleadings contained. The plaintiff was aware that an assertion of possession in relation to a vacant land could not have been pressed forth without proving his right to possess, for, it follows the legal axiom that in respect of vacant land, possession follows title. The issues that would require to be framed would, therefore, be as under:-

- i) Whether the sale deed dated 07.06.2004 in favour of plaintiff as averred in the plaint true and valid?
- ii) Whether the 4th defendant had the competency to act on behalf of the society to transfer valid possession in favour of the plaintiff?

8. The impugned order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

11.03.2016
sanjeev