

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.8487 of 2015

Date of Decision:6.5.2016

Chaman Lal

---Petitioner

vs.

Sarwan Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Chetan Bansal, Advocate
for the petitioner

Mr. N.C.Kinra, Advocate
for respondent No. 1

Mr. Sanjeev Soni, Advocate
for respondent No. 2

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

Rekha Mittal, J.

The present petition has been directed against order dated 30.9.2015 passed by the Civil Judge (Junior Division), Amritsar whereby application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (Annexure P-2) for rejection of plaint has been dismissed.

Counsel for the petitioner would contend that

respondent/plaintiff Sarwan Kumar has filed a suit for permanent injunction restraining the petitioner from dismantling any part of the suit property or making any additions, alterations, construction, re-construction and changing nature of the building i.e. dwelling house measuring 206 square yards bearing private no. 6-A, khasra Nos. 1781-1783-1784-1785, khata No. 344/360 situated at Abadi Guru Gobind Singh Nagar Sub Urban, Majitha Road, Amritsar and further restraining the Municipal Corporation, Amritsar (for short "MC, Amritsar") defendant No. 2 from granting any permission to defendant No. 1 qua dismantling or making additions, alterations, construction etc. in the said dwelling house.

It is argued that the respondent has got no cause of action to file the suit and thus the plaint is liable to be rejected. In the alternative, it is submitted that even if the respondent had cause of action at the time of institution of the suit, the said cause of action ceases to exist in view of subsequent developments that the earlier suit filed by the respondent, a reference whereof has been made in para 8 of the plaint (Annexure P-4), was decided against the respondent/plaintiff vide judgment and decree dated 13.6.2012 passed by the trial court and appeal preferred by him before the first appellate court has also been dismissed wherein it has been consistently held by the courts that the suit property had already been partitioned by metes and bounds and the plaintiff has no right to seek any injunction restraining the petitioner/defendant No. 2 in the earlier suit from making any additions, alterations, construction etc. in the suit property. Another submission made by counsel is that even if the application under Order 7 Rule 11 CPC is held to be not maintainable, suit of the

respondent/plaintiff is liable to be dismissed by invoking Section 151 CPC when otherwise in the application filed by the petitioner, there is also reference to Section 151 CPC. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **Shipping Corporation of India Limited vs. Machado Brothers and others 2004(2) R.C.R. (Civil) 557.**

Counsel for contesting respondent No. 1/plaintiff has supported the impugned order with the submissions that the learned trial court has rightly held that a suit for permanent injunction can be filed as and when cause of action arises and as many cases for permanent injunction can be filed as and when new cause of action arises and principle of res judicata does not apply to a suit for permanent injunction if there is a new cause of action for filing the suit. It is further argued that the present suit for injunction was filed not only against the petitioner but also against the MC, Amritsar and the MC, Amritsar is not a party in the previous suit instituted by the respondent/plaintiff for declaration and injunction. Another submission made by counsel is that judgment passed in the previous litigation has not attained finality as regular second appeal preferred by the petitioner is pending decision before this Court.

To refute contention of counsel for the petitioner that the suit is liable to be dismissed in exercise of inherent jurisdiction under Section 151 CPC, it is argued with vehemence that no such plea was raised before the trial court and the mere fact that the application under Order 7 Rule 11 CPC for rejection of plaint was filed with a plea that the same is to be read with Section 151 CPC is not sufficient to entertain much less accept plea of the

petitioner. As the petitioner cannot be allowed to take advantage of any findings recorded in the previous litigation which is sub judice before this Court in regular second appeal, the petitioner neither can invoke the provisions of Section 151 CPC nor can derive any advantage to his contention from the referred authority.

I have heard counsel for the parties, perused the paper book with able assistance of counsel for the parties.

Counsel for the petitioner has not disputed correctness of observations made by the learned trial court that a fresh suit for permanent injunction can be filed as and when cause of action arises. It is also an admitted position of the case that MC, Amritsar was not a party to the previous litigation. In this view of the matter, I do not find any merit in the contentions of the petitioner that suit filed by the respondent is without any cause of action.

So far as plea that the cause of action has ceased to exist in view of adjudication in the earlier litigation, the findings recorded by the courts below in the previous litigation have not attained finality, therefore, the petitioner, at this stage, cannot take advantage of those findings in order to contend that as the suit property already stands partitioned as has been held in the previous case, the respondent/plaintiff cannot seek an injunction against the petitioner to make any additions, alterations or construction in the suit land.

The petitioner did not challenge maintainability of the suit, in view of subsequent developments by invoking Section 151 CPC. This apart, as has been noticed hereinbefore, the findings in the earlier litigation

have not attained finality. That being so, contention of the petitioner that the suit is liable to be dismissed by invoking Section 151 CPC or by placing reliance upon judgment in **Shipping Corporation of India Limited's case (supra)**, is misconceived and untenable.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed leaving the parties to bear their own costs. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

6.5.2016
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