

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

RSA No.163 of 1987 (O&M)

Date of decision : 27.04.2016

Ajit Singh and others

...Appellants

Versus

Gram Panchayat Channian and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. S.P. Soi, Advocate for the appellants.

Mr. Kabir Sarin, Advocate
for the respondent No.1-Gram Panchayat.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby judgment and decree rendered by the trial Court dismissing the suit seeking possession of the suit land, has been decreed.

Mr. S.P. Soi, learned counsel appearing on behalf of appellant-defendant submits that on the identical issue, respondent-Gram Panchayat had filed the civil suit No.232 of 1979 seeking possession which was dismissed on merits vide judgment dated 22.12.1981 and in this regard,

issue No.3(i) was framed which was decided in favour of appellant-defendant. However, this aspect has totally been ignored by the lower Appellate and it has been held that once said issue was not pressed, therefore, the provision of Order 23 Rule 1 Sub-Rule 4 of the Act would be attracted. In support of his submissions, he has cited judgment rendered by this Court in *Jaswant Rai and others Vs. Municipality, Bathinda and others, 2015(1) PLR 265* and as well as judgment rendered in *Anil Kumar Dev and another Vs. Brijinder Kaur and another, 2011(7) RCR (Civil) 1173*.

He further submits that even the terms and conditions of the Muafidar had not been proved but the lower Appellate Court got swayed away by referring to the provision of Punjab Land Administration Manual holding that Muafidars were having inalienable right, and therefore, could not sell the property to the appellant-defendant who are bona fide purchaser for valuable consideration. He further submits that suit has not been filed by competent person but the lower Appellate Court while ignoring all these facts, illegally and perversely set aside judgment and decree thus urges this Court to formulate following substantial question of law:-

1. Whether judgment and decree rendered in Civil Suit No.232 of 1979 decided on 22.12.1981 Ex.PY suffers from vice of provision of Order 2 Rule 2 and Section 11 of the Code of Civil Procedure?
2. Whether in the absence of non-pressing of the issue by the counsel would tantamount to acquiesce the maintainability of the suit particularly when the issue of Order 23 Rule 3 is based upon public policy which does not afford an opportunity to the

litigant for abusing the process of law?

Mr. Kabir Sarin, learned counsel appearing on behalf of respondent No.1-Gram Panchayat submits that previous suit was dismissed on account of findings rendered on issue No.6 which has been rendered on account of the fact that Mohan Singh who had instituted the suit did not have authority to institute the suit and thus findings rendered in the previous suit would not come into way to seek the possession by filing the second suit by the competent person. He further submits that lower Appellate Court being the last Court of facts and law actually discharged the obligation after examining oral and documentary evidence, much less, provision of law by setting aside the judgment and decree of the trial Court. In support of his contention, he has also relies upon judgment rendered by Hon'ble Supreme Court in *Civil Appeal No.360 of 1966 decided on 20.02.1969 titled as Mehanga Singh Vs. Sunder Chand* to contend that Muafidars had inalienable right and, therefore alienation made by them was without jurisdiction and rightly so, as per the revenue record, respondent-plaintiff has been shown to be owner and sought possession from the present appellant-defendant. There is no illegality and perversity in the judgment and decree of the lower Appellate Court and urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the submission of Mr. Soi. Head note of the plaint and operative part of the relief in civil suit No.232 of 1979 reads thus:-

“HEAD NOTE OF THE PLAINT:-

In the District of Jullundur

In the Court of Sh. A.K. Sharma, PCS, SJIC, Nakodar.

Civil Suit No.232 of 1979

Date of Institution: 24.08.1979

Date of Decision: 22.12.1981

File received from the record room for copy.

R.G. No.61, G.No.1, Radif:101 Pargana: Nakodar

The Village Gram Panchayat of Village Channian, Police Station & Tehsil and Nakodar through Shri Mohan Singh member Gram Panchayat of Vill. Channian.

...Plaintiff

Versus

(1) Ajit Singh, (2) Mangat Singh sons of Nazar Singh son of Jawala Singh, (3) Hardev alias Dev, (4) Karnali, (5) Kewal sons of Beant Singh son of Jawala Singh and residents of Village Gurra, Police Station & Tehsil Nakodar.

...Defendants

A:- Suit for possession of land measuring 17 kanals and 8 marlas as 1/4th share of land measuring 69 kanals and 12 marlas bearing khewat and khatauni Nos.511/917, 919, 920, 921, 922 and khasra Nos. as follows:- 46//26(0-16), 27(0-19), 42//18 (6-14), 20/1(2-0), 21(4-2), 23(7-9), 44//3 (5-2), 42//17/2(5-12), 24/1(5-12), 44//4/1(6-0), 42//20/2(3-19), 42//14/2(4-10), 19(8-0), 22(7-18), 42//2(0-19) as entered in the copy of jamabandi for the year 1976-1977 and situate in the area of village Channian, Tehsil & Police Station Nakodar with share in wells, mehal, sehan, rah, allat chah, bari chah, standing trees, rights in canal irrigation and all incidental rights pertaining to this land in dispute on the basis of ownership.

B:- The suit possession of land measuring 6 kanals and 11 marlas as 3/32th share of land measuring 69 kanals and 19

marlas as detailed below: 69 kanals and 12 marlas as described in the suit A and 7 marlas as follows: Khasra No.143(0-5), 265(0-1), 266(0-1) khewat and khatauni Nos. as entered in the copy of jamabandi for the year 1976-1977 and situate in the area of village Channian, Tehsil Nakodar with all rights mentioned in suit A above on the basis of ownership.

C:- In the alternative of both the above suits A & B this suit C for possession of land measuring 21 kls. and 7 marlas, Nahri in kind bearing K/K Nos.511/922 and khasra Nos. as follows: 42//14/2(4-10), 19(8-0), 22(7-18), 42//2(0-19) as entered in the copy of jamabandi for the year 1976/1977 and situate in the area of vill. Channian, Tehsil Nakodar with all the rights mentioned above in suit A on the basis of ownership.

OPERATIVE PART OF THE RELIEF:-

16. In the light of my findings on issue No.6. I dismiss the suit of the plaintiffs with no order as to costs. Decree sheet be prepared. File be consigned.

Sd/-

Announced: 22.12.1981

*Sub Judge Ist Class,
Nakodar.”*

whereas similar relief has been sought in the instant case.

The findings rendered by the trial Court in my view is based upon appreciation of oral and documentary evidence, which reads as under:-

“Issue No.3

9. The defendants have taken the objection that the suit is barred u/o 2 rule 2 CPC and u/s 11 CPC. Previously, there has been litigation between the parties in the court of Shri A.K. Sharma SJIC Nakodar. The Village Gram Panchayat of Channian filed a suit for possession for the same land against the same defendants in the court of Sh.

A.K. Sharma, SJIC, Nakodar. The suit was ordered to be dismissed. No appeal was preferred against this order. Since the parties to the previous suit are the same and in the present case also are the same and the earlier suit was for possession of the same land, as such, it is but obvious that the present suit is barred u/o 2 R. 2 CPC. Copy of the decree sheet of the earlier suit is Ex.D3. Copy of the judgment is Ex.PY. After the dismissal of the earlier suit, no permission has been sought from the court to file a fresh suit for the same cause of action. As such, this suit is barred by the principles of resjudicata and u/o 2 R 2 CPC. Issue is decided in favour of the defendants and against the plaintiffs.”

There is no force in the submission of Mr. Kabir Sarin, that issue of Order 2 Rule 2 and Section 11 was not pressed. I am supported with the ratio decidendi culled out by this Court in *Jaswant Rai's case (supra)*, wherein it has been held that in the provision of Order 23 Rule 1 Sub Rule 4 of the Code of Civil Procedure, precludes the person not to abuse against the process of law and owing to involvement of the question of public policy. Even if the said issue was not pressed, same can always be considered. For the sake of brevity, findings rendered in para No.16 and 17 of the judgment rendered in *Jaswant Rai and others's case (Supra)* reads as under:-

“16. The provision of Order 23, Rule 1 CPC is based on public policy not to give an opportunity to a litigant to abuse the process of the Court. Such a legal bar is a matter concerning the Court. Even if the defendant had not raised in the written statement as to such a legal bar, the Court having come to know of the earlier suit filed and

withdrawn without any liberty is competent to take up the issue suo motu and dismiss the suit. The parties to the suit have no right to give up a legal bar to institute a second suit. In the instant case, concession given by the defendants counsel during the course of arguments does not debar the Court from taking up such a legal issue and decide it.

17. In the instant case, there is no dispute to the fact that earlier suit which was laid by the plaintiffs in respect of the same subject matter of the suit was dismissed as withdrawn without any liberty accorded to the plaintiffs to institute a fresh suit. A legal bar under Order 23, Rule 1(4) CPC debars the plaintiffs from instituting a fresh suit in the absence of any leave.”

Similar is the view taken by the judgment rendered in Anil Kumar Devi's case (Supra). The lower Appellate Court, in my view, thus failed to assign reasons on aforementioned fact but simply held that said issue was not pressed. The plaintiff has failed to bring on record the terms and conditions of the Muafidar and in order to enable the Court to form the opinion whether Muafidar had inalienable right, so that, it could be said alienation at their behest was against the terms and conditions of Muafidar.

In view of what has been noticed above, judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored. Question of law as noticed above is answered in favour of appellant-defendant and against the respondent-plaintiff.

Appeal stands allowed.

27.04.2016

pawan

**(AMIT RAWAL)
JUDGE**