

RSA NO. 951 OF 1990

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

RSA NO. 951 OF 1990

Date of Decision: March 18, 2016

Uttam Singh

-Appellant

Versus

Sul Khan Singh and others

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K. Arya, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. G.S. Virk, Advocate for
Mr. G.S. Nagra, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

{1}. Plaintiff has filed the present appeal after having remained unsuccessful before both the Courts below. Plaintiff filed suit for permanent injunction restraining the defendants from

interfering illegally and dispossessing the plaintiff forcibly from the suit land measuring 11 Kanal 18 Marlas comprised in Khewat No.94, Khatoni No.138, Rect. No.9, Killa No.14/2(3-14), 16(0-11) and 17(7-13) situated in the revenue estate of village Kathiali, Tehsil&District Gurdaspur as per jamabandi for the year 1980-81.

{2}. Plaintiff alleged that he is in cultivating possession of the land for the last many years. Defendants have no right, title and interest in the suit land but they are hard core persons and have threatened to dispossess the plaintiff forcibly from the suit land. Plaintiff further alleged that he has constructed a kotha and installed a tubewell on the suit land.

{3}. The suit was contested by the defendants on number of counts. Defendants alleged that the plaintiff has mis-used the process of law and has not come to the Court with clean hands. Earlier suit filed by the plaintiff for permanent injunction was dismissed as withdrawn on 14.09.1987. All the present defendants were impleaded in the suit land in which prayer for temporary injunction was finally declined by the trial Court. The

plaintiff has conveniently concealed the filing of earlier suit in the present suit. Secondly on merits, defendants have denied the claim of the plaintiff on the ground that the land in question originally belonged to Mushtarka Malkan of the village numbering 59. Out of total 59 co-sharers, 45 co-sharers have already sold their shares in favour of Gurdwara Singh Sabha Kathiali, through Sulkhan Singh vide sale deed dated 04.08.1986. Defendants have no concern with the suit land. Gurdwara Singh Sabha became co-sharer in the suit land and as such suit against them was not maintainable. Defendant No.1 being President of Gurdwara Singh Sabha has every right to protect the interest of Gurdwara Singh Sabha. Other defendants are the office bearers of the Gurdwara. In this way, it was claimed that the plaintiff has not come to the Court with clean hands and the injunction being an equitable relief can be denied to the plaintiff on this score.

{4}. After filing of replication, both the parties went to trial on following issues:-

{1}. Whether the plaintiff is owner in

possession of the suit land? OPP.

{2}. Whether the plaintiff is entitled to the injunction prayed for? OPP.

{3}. Whether the suit is not maintainable in the present form? OPD.

{4}. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD.

{5}. Whether the plaintiff has misused the process of law? OPD.

{6}. Relief.

{5}. Both the parties led evidence. Plaintiff appeared as PW1 and relied upon jamabandi for the year 1980-81 to claim his possession for the last more than 20 years. Similarly, Khasra Girdawari for the year 1986-87 Ex.P2 and mutation Ex.P3 were also adduced in evidence. Defendants claimed that the land was jointly owned and possessed by many persons. Out of 59 share holders, 45 share holders sold their share in favour of Gurdwara

Singh Sabha vide sale deed dated 04.08.1986 Ex.D1. Defendants on the strength of testimony of DW1 Sulkhan Singh emphasized upon the concept of co-sharership in which injunction cannot be granted against a co-sharer at the instance of plaintiff being co-sharer. Trial Court found that though the plaintiff was recorded to be in possession but the revenue record is not the conclusive proof of ownership of the plaintiff over the land in question. At the most, he is a co-sharer with many other persons.

{6}. The jamabandi Ex.P1 also proves that 45 shares out of 59 shares were purchased by the Gurdwara Singh Sabha and the affairs of the Gurdwara were managed by the defendants. Even, if, the mutation was not finalized in favour of Gurdwara that did not take away the right of co-sharership in favour of Gurdwara because mutation in any case does not prove title of the suit land. The non-sanctioning of mutation was held to be not fatal to the claim of Gurdwara. Fauja Singh also sold his share to Gurdwara Singh Sabha. Trial Court dismissed the suit vide judgment and decree dated 17.08.1988. Plaintiff remained

unsuccessful in the first appeal before lower Appellate Court which was also dismissed vide judgment and decree dated 19.02.1990. Hence, the present appeal.

{7}. I have heard learned counsel for both the parties and have also carefully perused the record.

{8}. At the time of admission of appeal, the contention of learned counsel for the appellant was that his possession was depicted in terms of Khasra Girdawari and he was not vendor of Gurdwara Singh Sabha. He claimed his cause of action to be a continuous cause of action and withdrawal of previous suit was claimed not to have any effect of resjudicata.

{9}. No substantial questions of law have been framed in this appeal, still, I proceeded to analyse the evidence in the light of claim made by the appellant at the time of admission of the appeal. Jamabandi for the year 1980-81 Ex.P1 showed Mustarka Malkan Hasad Rasab Khewat in the column of ownership. Uttam Singh son of Lal Singh was shown to be Hissedar in the column of possession. The same entries continued even in Khasra

Girdawari from 28.10.1986 onwards Ex.P2. The remarks column of the jamabandi have the recital of sale dated 06.08.1986 vide which out of total proprietors/co-sharers of the land, 45 co-sharers sold their share in favour of Gurdwara Singh Sabha.

{10}. Earlier suit No.346 of 1986 was filed by Lal Singh father of the plaintiff as well as plaintiff himself on 07.08.1986 against Gurdwara Singh Sabha and the present defendants. In the said suit, vide order dated 11.11.1986, temporary injunction was declined to the plaintiff on the ground that defendants were also found to be joint owners in possession of the suit land. Joint owners being in possession cannot be restrained from the joint land. Vide the aforesaid order, interim injunction granted earlier was vacated. Thereafter, vide order dated 12.09.1987, the suit itself was dismissed for want of prosecution on the statement of learned counsel for the plaintiff that he has no instructions from his client to proceed further with the case.

{11}. Sale deed dated 04.08.1986 in favour of Gurdwara Singh Sabha has been produced on record as Ex.D1. The order

dated 11.11.1986 has been exhibited as Ex.D2 and the order dated 12.09.1987 dismissing the earlier suit for want of prosecution has been exhibited as Ex.D3.

{12}. In the present suit, the plaintiff has attempted to seek injunction against the defendants by impleading them in personal capacity. Plaintiff has concealed the factum of earlier suit in the plaint. A person who has not come to the Court with clean hands and has concealed material fact from the Court is not entitled to the equitable relief of injunction. The argument of learned counsel for the appellant that there was no threat of dispossession by the defendants in the earlier suit and, therefore, the suit was dismissed for want of prosecution has no relevant connectivity vis-a-vis the relief claimed in the present suit because the present defendants were party defendants in the earlier suit as well. No capacity was defined in the earlier suit rather after impleading Gurdwara Singh Sabha as defendant No.1 through its Manager Fauja Singh, remaining three defendants were impleaded in their personal capacity. No permission was sought to file fresh suit on

same cause of action so far as present defendants are concerned. Even otherwise, by virtue of sale deed dated 04.08.1986 Ex.D1, Gurdwara Singh Sabha became co-sharer in the suit land.

{13}. Plaintiff is not found to be exclusive owner in possession of the suit land as his possession was depicted only in the form of co-sharer. It is a settled principle of law that all the co-sharers in joint land are presumed to be in possession on each and every parcel/inch of land until and unless the land is partitioned by metes and bounds. Admittedly, the land was never partitioned. Even, if, one of the co-sharer is out of possession, he would be deemed to be in possession over the land and no injunction can be granted in favour of one of the co-sharer against other co-sharer. The remedy available to the plaintiff is to seek partition.

{14}. The filing of suit even on merits was not maintainable. The claim of the appellant that he was not vendor of the Gurdwara Singh Sabha does not prove his case in the context of

granting injunction against other co-sharers. Fact remains that even, if, the plaintiff has not sold his share out of Mustarka Malkan, he can only be a co-sharer in the joint land where Gurdwara Singh Sabha is a party. Moreover, the plaintiff has conveniently concealed the factum of filing of earlier suit. It is a settled principle that a party who has not come to the Court with clean hands and has concealed material facts is not entitled to discretionary relief of injunction. The claim of the plaintiff in respect of earlier suit that the earlier suit was dismissed for want of prosecution on account of no threat of dispossession at the hands of the defendants therein goes against the interest of the plaintiff as well in the present suit.

{15}. The argument of learned counsel in the context of earlier suit appears to be unfounded inasmuch as that there was no such statement that there was no threat of dispossession by the defendants in the previous suit which was dismissed as withdrawn. The attempt made by the appellant was intended to conceal true facts as the present suit was filed on 06.06.1987

when the earlier suit was pending. The earlier suit was only dismissed for want of prosecution on 12.09.1987, therefore, the argument is totally devoid of merits. Plaintiff is proved to have mis-used the process of law and is guilty of concealment of facts. Apparently, the defendants have also sold their share in favour of Gurdwara Singh Sabha. Their capacity in the earlier suit was a defined capacity and relief was sought against them in specific manner. With the filing of the same suit against them in their individual capacity would not change the title of Gurdwara Singh Sabha as vendee from these persons simply because that they being defendants are managing the affairs of Gurdwara would not entitle the plaintiff to seek individual relief against them particularly when in the present suit Gurdwara Singh Sabha has not been impleaded as party defendant and are not the co-sharer after sales having been made in favour of Gurdwara.

{16}. There is no overt act done on behalf of the defendants as to in what manner they have interfered in the possession of the plaintiff. Filing of present suit during pendency of earlier suit was a

clever device in order to mis-use the process of law, nor the previous suit was ever got revived by the plaintiff.

{17}. Since no substantial questions of law have been framed nor argued at the time of hearing of the case, this Court does not find any worth in the submissions made by the learned counsel for the appellant.

{18}. Consequently, this appeal is found to be bereft of merits and the same is accordingly dismissed.

March 18, 2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**