

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

RSA No.2330 of 2012 (O&M)

Date of decision : 29.11.2016

Harbans Lal

...Appellant

Versus

Faqir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. K.S. Dadwal, Advocate for the appellant.

Mr. P.S. Thiara, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The appellant-plaintiffs is aggrieved of the dismissal of the suit
vis-a-vis suit land, wherein he had sought following relief:-

“It is therefore prayed that a decree for permanent injunction to the effect that defendants be restrained to dispossess the plaintiffs forcibly from the land measuring 1 kanal comprising khasra No.177 as entered in Bando Bast 1928 B.K. situated in Village Domeli, Teh. Phagwara bounded as:-

East:- Road;

West: Darshan and Swarn Singh

North: Defendant No.1 and Swarn Singh

South: House of Teja Ram and plaintiff No.1 etc.

And the defendants be further restrained to interfere in the possession of the plaintiffs over the said land. The

defendants be further restrained to raise any sort of construction on the said land and further be restrained to alienate or dispose off the suit land in any way along with costs be passed in favour of the plaintiffs and against the defendants.

Any other relief found just and proper be also awarded.”

Mr. K.S. Dadwal, learned counsel appearing on behalf of appellant-plaintiffs has drawn the attention of this Court to para No.4 of the plaint and as well as of written statement. The same reads thus:-

“Para No.4 of the plaint:-

4. *That towards southern side of the suit land there is house of plaintiff no.1 and his brother Teja Ram and other brothers and sisters and the ventilators and a door of the said house open towards this suit land.*

Para No.4 of the Written statement:-

4. *That para No.4 of the plaint is correct to the extent that towards southern side of the suit land i.e. Khasra Nos.268 & 267, there is house of plaintiff and his brothers Teja Ram etc. and others duly shown in attached two photostat site plans. The alleged ventilators towards the said land are of temporary nature and prepared cement, affixed in the wall of the plaintiff's house and the defendants have every right to close the same at the time of construction. It is pertinent to mention here that said Charanji Lal after dismissal of his said petition vide orders dated 16.1.98 of Hon'ble High Court Punjab & Haryana, Chandigarh, put forth his brother Teja Ram as his front man with a sinister motive to grab the property of answering defendants and now the plaintiffs have filed the present suit with a mala fide intention and a sinister motive to grab the property of the answering defendants to which the plaintiffs or any other person or persons have no right,*

title or concern with the suit land in any capacity.”

He submits that this Court while issuing notice of motion had recorded the contention in extenso, which reads as under:-

“Mr. K.S. Dadwal, Advocate for appellant.

The plaintiff-appellant has filed a suit for permanent injunction to restrain the defendant-respondents to dispossess him forcibly from one kanal of land comprised in khasra No.177. The courts below have dismissed the suit of the plaintiff-appellant observing that the plaintiff-appellant has constructed his house in khasra No.177 and under the garb of khasra No.177, he wanted to grab the property in dispute, which is comprised in khasra Nos.267 and 268, which are adjacent to the property in dispute.

Learned counsel for the plaintiff-appellant has contended that the courts below did not appreciate the fact the suit of the plaintiff-appellant ought to have been decreed regarding one kanal land comprised in khasra No.177, on which house of the plaintiff-appellant has been constructed. It has been urged that the plaintiff-appellant does not have any intention to grab khasra Nos.267 and 268, which are adjacent to the property in dispute.

Heard.

It appears that the plaintiff-appellant has been able to establish his possession over khasra No.177 in a land measuring one kanal. Statements of the witnesses apparently suggest that there is some vacant land adjacent to the house of the plaintiff-appellant, which vests in the defendant-respondents Faqir Singh and Sadhu Singh. The plaintiff-appellant has claimed that his suit is only in context to khasra No.177 measuring one kanal and the plaintiff-appellant has got no intention to usurp the land of the defendant-respondents in khasra Nos.267 and 268 and

that he does not want to forcibly take the possession of any land adjacent to the property in dispute i.e. khasra No.177. It appears that the suit of the plaintiff-appellant could have been partly decreed only to the extent of portion, which is in his actual physical possession.

Notice of motion for 6.11.2012.

Meanwhile, status quo regarding the property in dispute i.e. khasra No.177 measuring one kanal, will be maintained. However, the plaintiff-appellant, under the garb of this order, will not be entitled to usurp the land in khasra Nos.267 or 268.”

On instruction from client, submits that he will not cause any forcible interference or make an attempt through his agent, servants and will not cause forcible dispossession vis-a-vis khasra Nos.267 and 268 but equally the respondent-defendants should not cause any forcible interference or dispossession qua ownership of khasra No.177 on which house is in existence, which has been conceded and admitted in the written statement.

Per Contra, Mr. Thiara, learned counsel appearing on behalf of respondent-defendants submits that Charanji Lal son of Ram Chand, brother of Teja Ram as well as brother of the plaintiff had filed the similar suit for injunction and the same was dismissed. In fact, defendants are having the possessory rights over khasra Nos.267 and 268 for which the appellant-plaintiff has no right. In fact, a petition under Section 42 at the instance of the aforementioned person by invoking the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was filed, in which, there was a categoric admission qua khasra Nos.267 and 268

being allotted to defendant Nos.1 and 2 for the purpose of abadi. In fact, the appellant-plaintiff has failed to establish the possession over khasra number, much less, existence of the house. Neither any khasra girdawri, jamabandi or any corroborative evidence in this regard has been led. Concurrent findings of fact cannot be interfered until and unless there is a gross illegality and perversity and thus urges this Court for dismissal of the appeal with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Dadwal, Advocate. At least the suit was required to be decreed in part vis-a-vis khasra No.177.

On juxta position of the pleadings culled out in para No.4 of the plaint and corresponding para in written statement, there is a categorical admission of the defendants qua existence of the house of the plaintiff.

Mr. Dadwal, Advocate has suffered a statement as noticed in the submissions, that his client, attorney, servants or any other persons will not cause any interference or make an attempt to dispossess the defendant Nos.1 and 2 with regard to khasra Nos.267 and 268. Once there is admission qua khasra No.177 regarding existence of the house, I am of the view that suit of the appellant-plaintiff is required to be decreed in part but the Courts below, in my view, have abdicated in not referring to the categorical admission as extracted above.

Provisions of res judicata do not apply in suit for injunction. Moreover, copy of the plaint, written statement and other proceedings have not been brought on record. In the absence of the same, plea of res judicata

is not only proved but cannot be entertained.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29] ”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision.

Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Accordingly, suit of the appellant-plaintiffs is partly decreed. The defendants are restrained from interfering into possession of the appellant-plaintiff regarding khasra No.177. The appellant-plaintiffs have

also restrained from causing any interference and forcible dispossession of the defendant Nos.1 and 2 with regard to khasra Nos.267 and 268. Judgment and decree of the Courts below are set aside. Decree sheet be prepared in the aforementioned terms.

Accordingly, present appeal is allowed.

29.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No