

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 17 of 2012

Date of decision : July 11, 2017

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Mohinder Singh

.....Appellant

Versus

Rulda Ram and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sudhir Paruthi, Advocate for the appellant.

Mr. Bhag Singh, Advocate for respondents no.1 to 7.

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RITU BAHRI, J.

The plaintiff-appellant has come up in this appeal against the judgment and decree dated 21.5.2009 passed by the Civil Judge (Senior Division), Ambala, whereby the suit filed by the appellant-plaintiff for permanent injunction and mandatory injunction has been decreed and the judgment dated 30.7.2011 passed by the District Judge, Ambala, whereby the appeal against the judgment and decree dated 21.5.2009 has been dismissed.

The suit was filed by the plaintiff-appellant seeking permanent injunction as well as mandatory injunction to the effect that the defendants be restrained from cutting removing any trees, demolishing tubewell/kotha and raising any sort of construction over the land/barra measuring 2 kanals

bearing khewat-Khatauni No. 129 min./209, Khasra No.52 min and other land marked by letters ABCD as shown in the site plan attached with the plaint situated within the abadi Deh of Village Majri, Tehsil and Distt. Ambala and further directions were sought to remove small cemented structure allegedly named as Samadi of Niranjana Ram constructed on the aforesaid land/bara by the defendants.

On notice, written statement was filed by the Gram Panchayat, Village Majri, Tehsil and District Ambala (defendant no. 4 in the suit) submitting therein that the plaintiff-appellant had already filed a suit under Section 13-B of the Punjab Village Common Land Act (hereinafter referred to as 'PVCL Act') against the Gram Panchayat of Village Majri regarding property in question in the Court of Sh. K.K Gupta, Assistant Collector Ist Grade, Ambala titled as "Mohinder Singh vs. Gram Panchayat Majri" and the said suit was dismissed on 23.4.1984. The plaintiff-appellant had also preferred appeal which was also dismissed and the present suit was barred by Order 2 Rule 2 CPC. Defendant no.4 was claiming to be owner of the suit property

In separate written statements filed by defendants no. 1 to 3, they pleaded that the plaintiff-appellant had not come to the Court with clean hands and repeated their version of the defendant no.4 with regard to filing of earlier suit by the plaintiff-appellant under Section 13-B of PVCL Act against Gram Panchayat regarding suit property and its dismissal. They also denied the ownership and possession of the plaintiff-appellant over the suit property. They took the plea of res judicata under Order 2 Rule 2 CPC.

On 16.5.2007, the issues were framed as under:

1. Whether the suit for decree for permanent

injunction on the ground taken in the plaint?

OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether plaintiffs has concealed the true and material facts from the Court? OPD

4. Whether the suit of the plaintiff is also totally false and frivolous to the knowledge of the plaintiff? OPD

5. Whether the suit of the plaintiff is hit by provision of Order 2 Rule 2 of CPC? OPD

6. Whether the plaintiff is without any cause of action? OPD.

7. Relief.

Apart from the fact of a civil suit filed by the plaintiff-appellant under Section 13-B of PVCL Act regarding the suit property which has been mentioned in the written statement filed by defendant no.4, another fact which the plaintiff-appellant has suppressed from the Court is regarding the previous civil suit titled as 'Mohinder Singh vs. Joginder Ram and others' regarding the same property. This suit had been dismissed by the Court of Sh. Devinder Singh, Civil Judge (Junior Division), Ambala vide judgment dated 10.5.2008 Ex. DX and decree sheet Ex. DY, which had been drawn accordingly against the plaintiff and in favour of the defendants. The suit of the plaintiff-appellant had been dismissed by giving a finding that he did not make any reference to the previous suit which had been decided vide

judgment Ex. DX and decree Ex. DY and with regard to the previous suit filed by him under Section 13-B PVCL Act in the revenue Court. Moreover, the plaintiff-appellant had placed on record a number of documents Ex.P7 to P-13. Ex. P-7 is a copy of plaint whereas Ex. P-8 is written statement of civil suit titled as 'Rulda Ram vs. Niranjana'. Trial Court observed that the documents Ex. P-7 to P-19 were placed on record just to create confusion in the minds of the Court. Since Ex. DX and decree sheet Ex. DY had not been placed on record and since the plaintiff-appellant's suit was hit by res judicata under Section 11 CPC, all the issues were decided against the plaintiff-appellant and a suit for permanent injunction was dismissed.

The Lower Appellate Court upheld the judgment passed by the trial Court and observed that as per copies of the jamabandi as well as Khasra Girdawri Ex. P-14 and P-15, ownership of the property in dispute was to be of Abadi Deh and the same in possession of the plaintiff as *gair marusian*. On the basis of these entries in the said revenue record, the plaintiff-appellant unsuccessfully claimed that property before the revenue authorities and there was civil litigation with regard to the property in dispute between the plaintiff-appellant and the defendants which ended in favour of the defendants. Since the dispute between the parties had already been adjudicated by the competent court vide judgments DX and DY, the second suit on the same cause of action was rightly held not to be maintainable and hit by principle of *res judicata*. Lower appellate Court further rightly observed that the ownership of the land falling within the *abadi deh* does not automatically vest in the Gram Panchayat but it was for the plaintiff to prove the ownership of the property in dispute by adducing

cogent evidence. The judgment passed by the trial court rejecting the claim of the plaintiff by invoking the principle of res judicata and non-maintainability of the suit was rightly upheld and findings recorded on issues no. 3 & 6 and others were ordered to be affirmed by the lower appellate Court.

Counsel for the plaintiff-appellant after arguing has not pointed out any other legal infirmity or irregularity in the findings of facts recorded by both the Courts below.

No substantial question of law arises for consideration in the present regular second appeal. Thus, in view of all that has been discussed above, present regular second appeal is hereby dismissed.

July 11, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No