

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3804 of 2017 (O&M)

Date of decision:31.7.2017

Kashmiro Devi

...Appellant

Versus

Dhani Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.P.M.Kansal, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Present regular second appeal, at the hands of unsuccessful plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby her suit for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 10.5.2013 and her first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 1.5.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned District Judge in para 2 of the impugned judgment, are that the appellant-plaintiff Kashmiro Devi filed a suit for permanent injunction against the respondents-defendants Dhani Ram and others on the averments that she along with her husband Bakshi Ram acquired the suit land measuring 7 kanals 19 marlas on lease from Punjab Wakf Board in the year 1995-96 vide allotment order dated 10.07.1996, where after they constructed their house over it by spending money from their pockets. The plaintiff was in

possession of such house/ property as lessee under the Punjab Wakf Board. Rent was being regularly paid to the Board. The defendants had no right or concern with the suit land. Earlier defendants filed a suit which was decided by the Court of Shri Karnail Singh Civil Judge (JD) Pathankot, vide judgment dated 27.07.2000. Such suit was for declaration to the effect that he was owner in possession of the land measuring 5 kanals 19 marlas out of the suit land but that suit was dismissed. He preferred appeal. It was also dismissed vide judgment and decree dated 05.10.2004. The defendants threatened to dispossess the plaintiff forcibly and illegally. Hence such suit for permanent injunction restraining the defendants from dispossessing her from the suit land.

Having been put to notice, defendants No.1 and 3 filed their contesting written statement. Similarly, defendants No.2 and 4 to 9 filed their separate written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- i. Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP
- ii. Whether the plaintiff has no cause of action to file the present suit ?OPD
- iii. Whether the suit is barred under section 11 of Civil Procedure Code ?OPD
- iv. Whether the plaintiff has suppressed the material facts from the Court ?OPD
- v. Whether the suit of the plaintiff is not maintainable ?OPD
- vi. Whether the site plan filed by the plaintiff is incorrect ?OPD

vii. Whether the plaintiff is estopped by her own act and conduct to file the present suit ?OPD

viii. Whether the suit is bad for mis joinder of parties ?OPD

ix. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove her case. Accordingly, suit of the plaintiff for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 10.5.2013. It was found that the plaintiff had earlier filed a case regarding this very suit property and the same was dismissed. Feeling aggrieved, plaintiff filed her first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 1.5.2015. Hence this regular second appeal, at the hands of plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that plaintiff-appellant filed an earlier suit at an earlier point of time qua the same suit property. Said suit of the plaintiff was dismissed. Plaintiff filed her first appeal, which was also dismissed by the learned first appellate court. Once the earlier judgment and decree in her own suit had attained finality against the plaintiff, she was having no fresh cause of action to file the present suit. Further, withholding the above-said material aspect of the matter from the notice of the learned trial court, plaintiff rendered herself totally disentitled for any kind of relief, at the hands of any court of law. Having said that, this Court feels no

hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Exhibit P1 dated 5.10.2004 was the judgment passed by the learned first appellate court in earlier round of litigation between the parties. In such a situation, it was least expected from the appellant that she must have disclosed the true facts before the learned courts below. However, since the appellant withheld the material information from the notice of the learned courts below, she is not entitled for any kind of relief, at the hands of this Court as well. In this view of the matter, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Ramjas Foundation and another Vs. Union of India and others, 2010 (14) SCC 38, Orissa Industrial Infrastructure Development Corporation Vs. M/s. MESCO Kalinga Steel Ltd. & othes, 2017(172) AIC 163, Chandu Vs. State of Haryana and others, 1993(3) PLR 456 (P&H) and Rohsan @ Roshan Lal Vs. The Secretary, Govt. of Haryana, 1998(4) RCR (Civil) 108 (P&H).**

So as to prove her case for permanent injunction, plaintiff miserably failed to bring on record any relevant and cogent evidence. No rent deed or lease deed was brought on record by the plaintiff for the reasons best known to her. She also failed to establish any relationship between the landlord and lessee. In this view of the matter, plaintiff was

bound to fail. That is what has been held by the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 10 to 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is admitted case of the plaintiff that property in dispute bears khasra no. 562 and it is owned by Punjab Wakf Board. According to the plaintiff she is in possession of the property in dispute as lessee under the Board from the year 1995-96. It is also admitted case of the plaintiff that earlier defendant no. 1 filed suit for declaration against her and Punjab Wakf Board in which judgment Ex.P1 was passed by the First Appellate Court regarding the property in dispute and the property in dispute was also subject matter of the said suit. Perusal of judgment Ex.P1 dated 05.10.2004 passed by the Court of Additional District Judge (FTC) Gurdaspur goes to show that in the said suit the plaintiff also claimed relief of permanent injunction by way of filing counter claim against defendant no. 1 of this suit and specific issue to this effect was framed but her counter claim along with suit of defendant no. 1 was also dismissed. The learned First Appellate Court rendered the following opinion:-

“ I first take up the assertions of Punjab Wakf Board as to how it has become the owner of the suit land and in what capacity the same is being leased to respondents no 4 and 5. Punjab Wakf Board deals with the property left by the Muslims which is not the instant case. The land in dispute was the ownership of Dhanni

Ram, which in the year 1964 he donated it to Acharya Vinobha Bhave, who had launched Bhoomi Dan movement and on the instigation of the officials of the Bhoomi Dan movement he denoted the same, although he has denied that he denoted the entire land which is in dispute, but this point will be considered subsequently. The fact remain that Punjab Wakf Board had got absolutely nothing to do with this property. How its name has been incorporated in the revenue papers such as jamabandi, mutation in the column of ownership is beyond comprehension. It seems to be a blunder carried out by some revenue officials, who seems to have mistook Bhoomi Dan Gram Dan Sabha Board Punjab as Punjab Wakf Board. This point has been fairly conceded at the time of arguments and calls for no elaboration. Defendant no. 2 Punjab Wakf Board is not the owner of this land and any entry in the revenue papers showing it to be the owners is null and void and inoperative on the right of the real owner. Any lease said to have been effected by the Punjab Wakf Board in favour of Lal Masih and Kashmiro is also an illegal act on the part of the respondent-defendant no.2 and will not regarding the ownership or possession”.

From the aforesaid findings of the learned First Appellate Court it is established that ownership of Punjab Wakf Board has been negated and further any lease granted by the Board in favour of any other person, including the plaintiff, has already been held to be illegal, null and void and also inoperative qua the rights of real owner. No doubt that defendant no. 1 was also non suited about his claim of ownership and possession over the land in dispute but otherwise when once the plaintiff has remained unsuccessful to get relief of permanent injunction against defendant no. 1 Dhani Ram in the said suit by filing counter claim, her second suit for permanent injunction on the same cause of action and

also regarding the same subject matter, which was directly and substantially in issue in the previous suit, is definitely barred by principle of resjudicata. On the basis of such illegal lease propounded by the plaintiff, she cannot be granted any relief of permanent injunction especially when it has already been declined in the earlier suit of judgment Ex.P1 between the same parties regarding the same subject matter in which the question of her possession and legality of lease was directly and substantially in issue.

Even otherwise the plaintiff has failed to prove on record any document of lease in her favour. Jamabandi Ex.P3 is on record. The name of the plaintiff is not mentioned in the column of possession rather Board has been shown to be in possession but in judgment Ex.P1 it has already been observed that mentioning the name of Punjab Wakf Board is a mistake committed by the revenue authorities and in fact it was Bhoomi Dan Board Punjab which was in actual possession of the land in dispute. So even from the revenue document, the plaintiff has failed to prove her possession over the land in dispute as lessee. Thus the learned Trial Court rightly appreciated the facts and evidence established on record while dismissing the suit of the plaintiff.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan**

Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Since the appeal is being dismissed on merits and the appellant has failed to furnish any plausible explanation for long delay of 379 days in refiling the appeal as well as 324 days in filing the appeal, both the applications are also dismissed.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

31.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No