

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.331 of 2016 (O&M)

Date of Decision.04.05.2018

Shakuntala and others

.....Petitioners

Vs

Satwanti Kumari and others

.....Respondents

2. **C.R. No.8161 of 2016**

Shakuntala and others

.....Petitioners

Vs

Satwanti Kumari and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Saurabh Bajaj, Advocate
for the petitioners.

Mr. Birender Singh Rana, Senior Advocate with
Mr. Parveen Kaushik, Advocate
for respondent No.1.

Mr. Rahul Deswal, Advocate
for respondent No.2.

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AMIT RAWAL J.(ORAL)

C.M. No.24513-CII of 2017

Learned counsel for the petitioners submitted that there is typographical error in the prayer clause of the revision petition wherein inadvertently defendant No.1 has been referred to as respondent No.1 whereas it should have been respondent No.2 and plaintiff has been referred to as respondent No.2 whereas it should have been respondent No.1 and prayed for correction of the same.

Learned counsel for the respondents has no objection to the

In view of the aforementioned, the oral request of the counsel for the petitioners is accepted the correction to the above effect is ordered to be made.

The application stands disposed of.

Main cases

This order of mine shall dispose of two revision petitions bearing No.331 of 2016 and 8161 of 2016. The former has been preferred by defendant No.15 to 17 challenging the order dated 07.01.2016 whereby the application of defendant No.1 for cross-examining the plaintiff has been allowed whereas the latter is at the instance of defendant No.15 & 17 against the order dated 18.11.2016 whereby on the application of respondent No.1-plaintiff, affidavit Ex.PW3/A of PW3 in the absence of cross-examination has been permitted to be filed in the Court by way of additional evidence.

Mr. Saurabh Bajaj, learned counsel appearing on behalf of the petitioners submitted that the plaintiff-respondent No.1, Satwant Kumari instituted the suit claiming following relief:-

“It is, therefore, prayed that a decree for declaration to the effect that the plaintiff and defendant No.1 are owners in possession of land measuring 15B-12B as per the Civil Court decree dated 15.02.1983 passed in civil suit No.85/1983 titled as “Satwanti Kumari Vs. Suba Singh” with consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit land and the defendants may kindly be restrained from alienating the property in dispute in favour of any person by way of sale,

lease, mortgage, lien etc may kindly be passed in favour of the plaintiff and against the defendants in the interest of justice, equity and conscience.

Any other relief/relieves to which this Hon'ble Court deems fit and proper may kindly be passed in favour of the plaintiff and against the defendants."

From the pith and substance of the prayer, it is clear that the suit is not simplicitor for permanent injunction but for according declaration of status of ownership to the effect that the plaintiff and defendant No.1 are owners in possession, though defendant No.1 filed the written statement apparently contesting the suit of the plaintiff on the basis of decree dated 15.02.1983 but the tenor and mode of the written statement reveals that there is no objection to the decretal of the suit. In this circumstance, defendant No.1 should not have been granted permission to cross-examine the plaintiff in the absence of clash of interest.

In the other revision petition, the plaintiff had filed the affidavit of PW3 by way of additional evidence though he was not subject to cross-examination, which is against the settled proposition in law The decree of 1994 has been set up without seeking amendment of the plaint, thus, there is illegality and perversity.

On the contrary, Mr. B.S. Rana, Ld. Senior Counsel assisted by Mr. Parveen Kaushik and Mr. Rahul Deswal, learned counsel appearing for respondent No.1 & 2 respectively submitted that the orders under challenge cannot be said to be without jurisdiction and are perfectly legal and justified. There is clash of interest between the plaintiff and defendant No.1, thus, urges this Court for dismissal of the revision petitions.

book and of the view that there is no force and merit in the submissions of Mr. Bajaj. From the bare perusal of the written statement (Annexure P-3), it is apparent that defendant No.1 had contested the suit by taking all preliminary objection. There is no iota of concession in decreeing the suit. In the absence of clash of interest, defendant No.1 can be permitted to cross-examine the plaintiff, thus, the permission granted by the trial Court cannot be faulted or said to be without jurisdiction.

In another revision petition bearing No.8161 of 2016, additional affidavit of PW-3, as noticed above, did not challenge the decree of 1994. Though there is no amendment in the plaint, the petitioners shall be at liberty to raise the said plea at appropriate stage regarding the evidence which according to them would be beyond pleadings but not in the manner and mode as adopted for the present.

In view of the aforementioned, I do not find any illegality and perversity in the orders under challenge and the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

May 04, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No