

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-5211-2015(O&M)

Date of decision : 26.09.2018

Surinder and others

... Petitioners

Versus

Balwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Sanjeev Manrai, Senior Advocate
with Mr.Ajay Singh Parmar, Advocate
for the petitioners.

Mr. G.S. Sandhu, Advocate
for LR's of respondent no.1.

Mr.Amit Jhanji, Advocate
for respondent no.5.

AMOL RATTAN SINGH, J.(ORAL)

CM-20641-CII-2018

Notice in the application.

Mr.Jhanji accepts notice and does not oppose the application.

Mr.Manrai, learned senior counsel appearing for the petitioners
also raises no objection to the application being allowed.

Consequently the application is allowed and the persons whose
names are given in paragraph 2 of the application, are ordered to be
impleaded as the legal heirs of respondent no.1, he having died on
08.06.2018. The amended memo of parties is also ordered to be taken on
record.

CR-5211-2015

By this petition, the petitioners challenge the order of the learned
Civil Judge (Senior Division), Ropar, dated 14.07.2015, by which they

(defendants no.5 to 7 in the suit) have not been permitted to lead evidence in the suit.

The reasoning given therein is that a preliminary issue on the maintainability of the suit itself was framed by the trial Court on 27.01.2015 (a copy of that order being Annexure P-5 with the present petition).

The said preliminary issue has been framed in view of the fact that respondent no.1/plaintiff (vide his suit) seeks a declaration that he is owner in possession of the suit land, (with consequential relief of permanent injunction also sought after such declaration in his favour, restraining the defendants from forcibly and illegally dispossessing him and alienating the suit land in any manner).

A perusal of the plaint (copy Annexure P-3) shows that the declaration sought by the respondent-plaintiff is essentially on the ground that he has been in possession of the suit land for the past more than 13 years (as contended) to the knowledge of the defendants and the public at large, with the defendants having never come in possession of the suit property and the possession of the plaintiff being “peaceful, continuous without any interruption and no body has ever raised any objections regarding the possession of the plaintiff over the suit property since long”. Thus such declaration is sought on the basis of the plaintiff being in adverse possession of the suit land (as contended by him).

Considering the above, without making any comment at this stage with regard to the maintainability of the suit, or otherwise, such comment not being called for by this Court at the preliminary stage of the suit itself, this petition is disposed of with a direction that if the preliminary issue is decided against the plaintiff, holding that a suit seeking declaration on the

basis of his adverse possession on the suit land is not maintainable, the petitioners herein, i.e. defendants no.5 to 7, would not have any right of leading evidence, their contention also being that it is they who are actually in adverse possession of the suit land (as submitted by learned senior counsel appearing for them). Thus, if the suit of the plaintiff is held to be not maintainable on the ground that a suit seeking declaration of title/ownership on the basis of adverse possession is not maintainable, then it would be wholly illogical to let the petitioners/defendants no.5 to 7 lead evidence that in fact they are in such adverse possession, the suit of the plaintiff itself not being maintainable on that ground (if it is so held by the trial Court). Obviously, in any suit filed by a true owner, the defence of adverse possession would be available to the petitioners (subject to that contention being proved), if they are impleaded as defendants in any such suit.

If, however, the preliminary issue is decided in favour of the respondent-plaintiff, holding that the suit is maintainable, then (naturally subject to any further order in appeal / revision etc.), all defendants would have a right to lead evidence in terms of their pleadings.

(AMOL RATTAN SINGH)
JUDGE

September 26, 2018.

D.K./dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No