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

**RSA-1153-1990 (O&M)
Date of decision : 20.07.2018**

Bhajan Singh and others

... Appellant(s)

Versus

Karnail Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Harveen Kaur, Advocate
for the appellants.

Mr. Mukesh Verma, Advocate for
Mr. R.K. Gupta, Advocate
for respondent No.1.

AMIT RAWAL, J.

The appellants-defendants preferred the present regular second appeal against the judgment and decree of the lower Appellate Court, whereby the suit of respondent No.1/plaintiff partly decreed by the trial Court vide judgment and decree dated 23.02.1988, has been decreed in entirety/toto.

Succinctly, the facts which emanate from the pleadings of the parties, are that the plaintiff instituted the suit for permanent injunction restraining the appellants-defendants from interfering in any manner with the right of enjoyment and access to his house by blocking or by raising construction over the property marked as 'DEFGHB' shown in the site plan attached with the plaint and with a further injunction restraining the

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defendants from closing the door, removing the water drain from the property, in dispute and for mandatory injunction to remove the construction raised on the property marked as 'ABCD' shown in the site plan. It was alleged that the plaintiff was the owner of the property shown in green colour attached with the plaint, however, the area shown in red colour was being used by the plaintiff for the last 35 years for approaching his house in a routine manner. There was no access to the house of the plaintiff except the property, in dispute. The defendants had no right, title and interest in the property, aforementioned. They had no concern to extend threats interfering in the possession and enjoyment of the property. The defendants forcibly and illegally raised the construction and boundary wall over the property marked as 'ABCD', which necessitated the plaintiff to institute the suit claiming the aforementioned relief.

The appellants-defendants contested the suit by raising plea of maintainability and on merits, the ownership of the plaintiff was denied. It was alleged that the property shown as 'DEFGHB' was part of Khasra No.165 and the property shown in red colour belonged to Harijan community and had been in their use from the very beginning.

Since the parties were at variance, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the injunction as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for non-joinder of necessary parties? OPD.
4. Relief.

Respondent No.1/plaintiff in support of the aforementioned

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pleadings, examined as many as six witnesses and tendered in evidence the documents (Ex.P1 to Ex.P4). On the other hand, the appellants-defendants examined as many as five witnesses and brought on record the documents (Ex.D-1 to Ex.D-3).

On the basis of the aforementioned evidence brought on record, the trial Court partly decreed the suit by restraining the defendants from interfering with the right of enjoyment and access to the plaintiff to his house by blocking or raising construction in the property marked as 'DEFGHB' shown in the site plan (Ex.P4), but declined to grant mandatory injunction for removing the construction over the property marked as ABCD shown in the site plan (Ex.P-4). Respondent No.1/plaintiff instituted the appeal against the judgment and decree of the trial Court declining the relief of mandatory injunction. The lower Appellate Court vide judgment and decree dated 11.01.1990 decreed the suit in entirety and reversed the finding of the trial Court with regard to the declining the relief of mandatory injunction. It is, in these circumstances, the appellants-defendants filed the present appeal.

This Court vide order dated 27.07.1990 stayed the decree of mandatory injunction during the pendency of the appeal.

Ms. Harveen Kaur, learned counsel appearing on behalf of the appellants-defendants in support of the memorandum of appeal raised the following submissions:-

1. The suit of mandatory injunction was not maintainable as the remedy for the respondent No.1/plaintiff was to claim possession.
2. The demarcation report has not been read in correct perspective,

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therefore, there is a misdirection, resulting into, perversity.

3. The appellants-defendants produced on record site plan to prove that the site 'ABCD' as per site plan (Ex.P-4) was never in the possession of the plaintiff, but was being used by *Valmiki* Community and idol of *Rishi Valmiki* had been installed. In this regard, Ex-Sarpanch of the Village, DW-3 Mai Ditta and DW2-Bhajan Singh, have been examined and their testimonies have gone un rebutted despite extensive cross-examination.
4. Concededly the property, in dispute, belonged to the Central Government, therefore, the plaintiff had not approached the Court claiming injunction with clean hands.

thus, urges this Court for setting aside of the findings rendered by the lower Appellate Court viz-a-viz mandatory injunction as irreparable loss would be caused. In fact, the suit under Section 6 of the Specific Relief Act, 1963 (in short 'the 1963 Act') was maintainable, instead of mandatory injunction as per the provisions of Section 39 of the 1963 Act

Per contra, Mr. Mukesh Verma, Advocate for Mr. R.K. Gupta, learned counsel appearing on behalf of respondent No.1/plaintiff submitted that the finding of fact and law arrived at by the lower Appellate Court are perfectly legal and justified, much less, do not call for interference as the trial Court abdicated in not granting the mandatory injunction despite the fact that demarcation report (Ex.P2) dated 22.04.1987 proved the construction raised by the appellants-defendants on the points shown as 'ABCD' without any authority and the aforementioned report has gone un rebutted. If at all, the defendants were aggrieved of such findings, they had an opportunity to lead evidence contrary to that. In the absence of the same,

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the trial Court abdicated in not referring to the same and therefore, the judgment and decree of the lower Appellate Court decreeing the suit in entirety do not call for interference, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no merit and force in the submissions of Ms. Harveen Kaur. Short question to be decided by the Court is whether the judgment and decree of the lower Appellate Court granting mandatory injunction declined by the trial Court is perverse or not, for, regarding finding viz-a-viz injunction with regard to area marked as 'DEFGHB' had not been assailed by the appellants-defendants. On going through the demarcation report (Ex.P-2) prepared by the Naib Tehsildar in the presence of the parties, it has unclinchingly been proved on record that the appellants-defendants had forcibly raised the construction over the area marked as ABCD without any authority, title or right. Concededly, the land underneath the construction belonged to the Central Government. The construction as per the report was recent and was not in existence earlier, thus, for all intents and purposes, in such circumstances, the remedy was to seek claim under Section 39 of the 1963 Act, where there is breach of obligation. For the sake of brevity, the provisions of Section 39 of the 1963 Act read thus:-

"39. Mandatory injunctions.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

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Section 6 of the 1963 Act only applies in cases where within a period of six months, a person is claiming the alleged dispossession of the immovable property. For the sake of brevity, the provisions of Section 6 of the 1963 Act read thus:-

"6. Suit by person dispossessed of immovable property.—
(1) If any person is dispossessed without his consent of
immovable property otherwise than in due course of law, he or
any person claiming through him may, by suit, recover
possession thereof, notwithstanding any other title that may be
set up in such suit.
(2) No suit under this section shall be brought—
(a) after the expiry of six months from the date of
dispossession; or
(b) against the Government.
(3) No appeal shall lie from any order or decree passed in any
suit instituted under this section, nor shall any review of any
such order or decree be allowed.
(4) Nothing in this section shall bar any person from suing to
establish his title to such property and to recover possession
thereof."

Neither respondent No.1/plaintiff nor the appellants-defendants had alleged any particular date with regard to the dispossession, therefore, the provisions of Section 6 of the 1963 Act could not be pressed into service as sought to be projected on behalf of respondent No.1/plaintiff, thus, argument of Ms. Harveen Kaur, regarding maintainability of the suit, is hereby rejected.

The appellants-defendants have not been able to rebut the demarcation report (Ex.P-2) and the site plan (Ex.P-4). For all intents and purposes, the property in dispute was/is bearing Khasra No.165. The defendants have not been able to prove the case in tandem with the

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pleadings in the written statement, for, the identity of the property was not in dispute. All these factors weighed in the mind of the lower Appellate Court in decreeing the suit in entirety. The argument of Ms. Harveen Kaur, thus, is not able to bring the case within the parameters of perversity enabling this Court to form a different opinion than the one arrived at by the lower Appellate Court, much less, raise any substantial question of law.

Resultantly, the present regular second appeal is dismissed.

20.07.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No