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

RSA No.2460 of 1992 (O&M)
Date of Decision.07.03.2018

Balbir Singh and others .....Appellants

Vs

Ajaib Singh (since deceased) through LRs and another .....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Bedi, Advocate
for the appellants.

Mr. Vikas Singh, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

C.M. No.9284-C of 2017

The present application has been moved under Order 1 Rule 10 CPC for impleading the applicant Amarjit Singh s/o Kapoor Singh as party in the appeal.

Since the main appeal itself resulted into dismissal, the fresh cause of action arises for the applicant and he is at liberty to avail the remedy in accordance with law but not in the manner and mode as indicated above.

The application stands disposed of.

C.M. No.3568-C of 2018

The application for bringing on record the legal representatives of deceased-Ajaib Singh and Jarnail Singh i.e. respondent No.1 and 2 respectively is allowed and the legal representatives are ordered to be brought on record.

The amended memo of parties is taken on record and the

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registry is directed to put it at appropriate place.

RSA No.2460 of 1992

The regular second appeal is at the instance of the appellants-plaintiffs against the judgment and decree of the lower Appellate Court dated 23.10.1992 whereby the judgment and decree of the trial Court decreeing the suit for permanent injunction restraining the defendants from interfering into the possession of the plaintiffs or dispossessing them except in due course of law from the land bearing khasra No.145/17(8 kanals), 18 (8 kanals), 145/24(8 kanals), Khata Uni No.370/760 situated in village Bandala, Tehsil and District Amritsar, was reversed, in essence, the suit of the plaintiffs was dismissed.

The plaintiffs instituted the suit for seeking restraint order on the averments that Didar Singh and Mukhtiar Singh were co-sharers of the suit property of Dheri Malook and they were in possession for more than 80 years. The aforementioned land was transferred by way of sale deed in favour of the plaintiffs and mutation was also sanctioned in their favour. Since the defendants wanted the forcible dispossession, the suit aforementioned was filed as defendants had no right, title or interest in the suit property.

The suit aforementioned was contested by the defendants by taking the plea of non-maintainability, locus standi, barred by limitation and estoppels. On merits, it was denied that the Didar Singh and Mukhtiar Singh were co-sharers of the suit land or sold the same to the plaintiffs, much less, long possession of 80 years. It was stated that the defendants were the co-sharers in the Patti Dheri Malook and had been enjoying continuous possession over the suit property as owners/co-sharers. The long

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possession would not create the presumption of ownership. The plaintiffs in connivance with the revenue authorities got revenue entries in their names. There was an earlier litigation between the parties i.e. civil suit No.369 of 1982 which was decided by the Civil Judge on 21.02.1985. The appeal was filed before the Additional District Judge whereby vide judgment and decree dated 05.04.1986, the judgment and decree of the trial Court was set aside and the parties were ordered to maintain the status quo. During the pendency of the earlier suit in the trial Court, the plaintiffs had wrongly and illegally changed the khasra girdawaries.

In replication, the aforementioned contentions were denied and the averments made in the plaint were reiterated.

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

"*1. Whether the plaintiffs are entitled to the injunction as prayed for? OPP*

2. Relief.

The plaintiffs in support of their case examined as many as five witnesses and brought on record documents i.e. jamabandi for the year 1980-81 as Ex.PW5/3, jamabandi for the year 1985-86 as Ex.PW5/4, khasra girdawari for the year 1981-82 to 1985-86 as Ex.PW5/5, khasra girdawari for the year 1986-87 to 1988-89 as Ex.PW5/6, copy of judgment dated 21.02.1985 passed in Civil Suit bearing No.369 of 1982 titled as "Ajaib Singh Vs. Surjit Singh and others" as Ex.PX.

On the contrary, the defendants examined as may as four witnesses and tendered into evidence Ex.DX/1 to DX/3 i.e. statements of the parties and the order dated 5.4.1986.

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The trial Court on the basis of the aforementioned evidence decreed the suit but the lower Appellate Court set aside the judgment and decree of the trial Court on the premise that in the earlier litigation as per judgment dated 05.04.1986 passed in Civil Appeal No.8 of 1985/86, Ex.DX/3, the judgment and decree dated 21.02.1985 rendered in Civil Suit No.369 of 1982 was modified and status quo order was passed in view of the settlement between the parties.

Mr. M.S. Bedi, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the judgment and decree of the lower Appellate Court is not only erroneous, fallacious but perverse, for, it has not taken into consideration the settled principle of law that before filing the suit, the party seeking permanent injunction must be in possession of the suit property. The suit in the present case was filed in the year 1985-86 and the copies of the jamabandi for the year 1985-86 Ex.PW5/4, copy of khasra girdawari from 1981-82 to 1985-86 Ex.PW5/5 and for the period from 1986-87 to 1988-89 Ex.PW5/6 showed the appellants-plaintiffs in possession. There was no bar to grant injunction to the appellants-plaintiffs even if status quo qua possession was ordered to be maintained in the earlier round of litigation. Status quo would not be construed in favour of other side rather would be construed as it exists, thus, urges this Court for setting aside the judgment and decree rendered by the lower Appellate Court.

Per contra, Mr. Vikas Singh, learned counsel appearing on behalf of the respondents submitted that aforementioned suit filed by Ajaib Singh seeking similar relief of injunction against the appellants-plaintiffs was dismissed vide judgment and decree dated 21.02.1985 but in appeal bearing No.8 of 1985 preferred against the aforementioned judgment and

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decree titled as "Ajaib Singh and another Vs. Surjit Singh and others", in view of the statements recorded by both the parties, the lower Appellate Court ordered the parties to maintain status quo. The status quo would not construe that the appellants-plaintiffs were in possession otherwise they would not have suffered the statement. The trial Court did not notice the aforementioned fact and ignored the evidence, thus, committed illegality and perversity. The lower Appellate Court being last court of face and law examined the evidence threadbare and reversed the finding. The finding of the trial Court on the basis of Ex.PX and PZ i.e. orders of SDO (Civil) and Collector, Amritsar would not help the plaintiffs as they were passed during the pendency of the suit, therefore, required to be ignored, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Bedi. The present suit was filed on 15.06.1985 titled as "Balbir Singh and others Vs. Ajaib Singh and another" whereas Ajaib Singh and Jarnail Singh had filed the suit against the present appellants-plaintiffs in civil suit bearing No.369 of 1982 seeking injunction restraining appellants-plaintiffs herein and defendants therein from interfering into the possession of the plaintiffs as owners over the land measuring 24 kanals as per jamabandi for the year 1980-81 situated in village Bundala, Tehsil and District Amritsar but the same was dismissed vide judgment and decree dated 21.02.1985. In the appeal laid before the lower Appellate Court as referred to above, parties to the lis i.e. Surjit Singh, Angrez Singh and Balbir Singh as well as Ajaib Singh suffered the statements and on the basis of the statements, the lower Appellate Court

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passed judgment and decree dated 5.4.1986. For the sake of brevity, the statements suffered by the parties and the judgment and decree dated 5.4.1986 are extracted herein below:-

"Copy of statements of Surjit Singh, Angrez Singh and Balbir Singh, respondents on SA and their counsel Sh. K.S. Rikhi, Advocate w/o.

The appeal be accepted and the judgment of the trial court be modified in the terms that directions be issued to the parties to maintain status quo regarding possession.

RO&AC *sd/- D.S. Chatha*
Addl. District Judge, Amritsar
5.4.1986

Copy of statement of Ajaib Singh appellant on SA and Shri T.S. Virk Advocate counsel for the appellants.

We have no objection if the judgment of the trial Court be amended accordingly and a decree in terms be passed directing the parties to maintain status quo regarding possession over the suit property.

sd/- D.S. Chatha
Addl. District Judge, Amritsar
5.4.1986"

Copy of Order dated 5.4.1986.

Present: Counsel for the parties.

In view of the statements recorded above, the appeal is accepted and the judgment and decree of the trial court is modified in the terms that the parties shall maintain status quo regarding possession over the property. File be consigned."

Pronounced. *sd/- D.S. Chatha*
5.4.1986. *Addl. District Judge, Amritsar"*

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The documents Ex.PX and PZ, the orders of the SDO and Collector passed during the pendency of the suit would not help the appellants-plaintiffs to claim injunction qua possession, rightly so, the lower Appellate Court reversed the finding rendered by the trial Court by relying upon the order dated 5.4.1986. Had the appellants-plaintiffs been in possession, they could not have suffered the statements.

In view of the aforementioned, the finding rendered by the lower Appellate court does not call for interference as the same is based upon correct appreciation of fact and law, much less, no question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No

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