

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: August 31, 2018

1. RSA No.3378 of 2001 (O&M)

Smt.Naseeb Kaur (since deceased) through L.Rs

...Appellant

Versus

Bant Singh & others

...Respondents

2. RSA No.2942 of 2005 (O&M)

Tehal Singh & others

...Appellant

Versus

Smt.Naseeb Kaur (since deceased) through L.Rs

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. H.S.Ghuman, Advocate,
for the appellant in RSA No.3378 of 2001 &
for the respondents in RSA No.2942 of 2005.

Mr. M.L.Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate,
for the appellants in RSA No.2942 of 2005 and
for respondent Nos.2 & 3 in RSA No.3378 of 2001.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.3378 of 2001 and 2942 of 2005. The land in both the cases is the same and both appeals involve identical question of law and fact and, therefore, they are being decided together.

RSA No.3378 of 2001 is at the instance of plaintiff- Naseeb

Kaur, who has not been successful in both the Courts below in Civil Suit

No.8 dated 5.1.1991 (hereafter called Suit No.1), wherein declaration was sought with regard to the suit land, the description of which is not disputed by either of the parties.

RSA No.2942 of 2005 is arising out of the decision in Civil Suit No.2 dated 2.1.1993 titled as Smt.Nasib Kaur Versus Tehal Singh, (hereinafter called, Suit No.2), wherein the appellant-defendant has assailed the judgment and decree of both the Courts below, whereby the aforementioned suit filed by the respondent-plaintiff for permanent injunction, has been decreed. In essence, the appellant-defendant has been restrained from interfering into peaceful possession of the respondent-plaintiff.

Naseeb Kaur instituted Suit No.1 seeking declaration that she had become owner by virtue of two sale deeds dated 20.12.1985 and 15.1.1986 (Ex.P1 and Ex.P2), one from Bant Singh- defendant No.1 and another from Piara Singh son of Lal Singh and was put in possession of the suit land. However, the defendants started asserting the right in the suit property on the premise that Joginder Singh had obtained a decree against Bant Singh and in lieu thereof, an application bearing No.16 of 1987 was filed resulting into issuance of warrant of possession.

The aforementioned suit was contested by Joginder Singh and Bant Singh and raised the plea of maintainability of the suit on the premise that the suit was not maintainable as per the provisions of Order 21 Rule 58 (4) of CPC, for, against the attachment order, plaintiff had already filed objections, which, after restoration as they were dismissed in default on 14.2.1989, were dismissed on 16.2.1990. The sale was confirmed on 6.8.1990. No further appeal had been preferred and, therefore, there was

complete bar for availing the remedy of separate suit.

The trial Court dismissed Suit No.1 and so did the Lower Appellate Court. However, in second suit, the trial Court on the basis of the contents of the sale deed that the possession had been handed over to Naseeb Kaur, granted injunction.

Mr. H.S.Ghuman, learned counsel for the appellant in RSA No.3378 of 2001 and for respondents in RSA No.2942 of 2005 submitted that the registered document, i.e., sale deed carries a presumption of truth. The possession of the suit property had been handed over. Ex.D1 jamabandi only reflected the attachment of the property in pursuance of the decree obtained by Tehal Singh. It is in these circumstances, plaintiff had filed the suit for declaration. The suit was not barred by Order 21 Rule 58 of CPC as it was an independent remedy to claim declaration as per the provisions of Section 34 of the Special Relief Act. There is gross illegality and perversity.

He supported the judgment and decree in the second suit on the premise that concurrent findings of fact and law cannot be interfered with unless and until there is gross illegality as the defendants had not been able to belie the possession reflected in the sale deeds or place on record any document that they had been in possession. The injunction granted, thus, cannot be vacated or interfered with.

Mr. M.L.Saggar, learned Senior Counsel assisted by Ms.Armaan Saggar, Advocate, representing the appellants in RSA No.2942 of 2005 and respondent Nos.2 and 3 in RSA No.3378 of 2001 submitted that the onus to prove the possession was on the plaintiff. Both the Courts abdicated in not referring to any document in granting the injunction, for, essential ingredient for granting injunction is to establish long and settled

possession, which the plaintiff failed to prove. Even no mutation had been placed on record what to talk of any other revenue record, much less khasra girdawari and, thus, urged this Court for allowing Appeal No.2942 of 2005 and dismissal of Appeal No.3378 of 2001.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Ghuman on the following reasons:-

- 1) It would be apt to reproduce Rule 58 of Order 21 CPC.

The same reads thus;

“58. Adjudication of claims to or objections to attachment of property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained : Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such-suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.”

2) It is settled law, much less an emphatic bar, for the litigants to avail repetitive remedies for alleged vindication of the grievance;

3) Concededly, objections to the attachment of the property filed by Bant Singh had been dismissed on 16.2.1990. Thereafter, the sale was confirmed on 6.8.1990 and the possession was taken by Tehal Singh and others. The aforementioned view of mine is also reiterated from the ratio decidendi culled out by the Hon'ble Supreme Court in **Siddagangaiah (Dead) through legal representatives Versus N.K.Giriraja Shetty (Dead) through legal representatives,** (2018) 7 Supreme Court Cases 278 (Paragraphs 23 & 24).

4) As regards granting of injunction, both the Courts below, in my view, have abdicated in granting the injunction as the plaintiff did not discharge the onus as per provisions of Section 101 of the Indian Evidence Act;

5) No documentary evidence has been placed on record to establish that in pursuance of the sale deeds Ex.P1 and Ex.P2, Naseeb Kaur was put into possession. Even assistance of the Local Commissioner was not taken. In my view, the plaintiff miserably failed to discharge the onus. Mere mentioning in the sale deed does not confer possession without any direct or cogent evidence;

6) The argument of Mr. Ghuman is not able to bring the case within the realm of perversity to form a different opinion than the one arrived at in Suit No.1.

Resultantly, RSA No.3378 of 2001 is dismissed. However, RSA No.2942 of 2005 is allowed. Therefore, the question of law framed vide order dated 22.7.2009 in RSA No.2942 of 2005 are answered in favour of the appellants therein. The judgments and decrees of the Courts below are set-aside. The Suit is dismissed.

August 31, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No