

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:20.11.2018

RSA-4395 of 2011(O&M)

Surjeet Singh

---Appellant

vs.

State of Haryana and others

---Respondents

CR No. 1287 of 2015(O&M)

Surjeet Singh and another

---Petitioners

vs.

Krishna and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.P.K.Ganga, Advocate
for the appellant

Mr. Ashwani Saini, DAG Haryana
Mr. Vivek Suri, Advocate
for respondents No. 3 to 7

Rekha Mittal, J.

This order will dispose of RSA No. 4395 of 2011 and CR No. 1287 of 2015 as these have emerged out of Civil Suit No. 40-C of 2001/2007 decided on 10.11.2009. For facility of reference, facts are taken from RSA No. 4395 of 2011.

Om Parkash and Surjeet Singh sons of Sh. Pali Ram, plaintiffs-appellant filed a suit for declaration and permanent injunction claiming

themselves to be owners in possession of suit land which was previously owned by Sh. Ganga Vishan, big land owner and transferred in the name of Smt. Parvati Devi, mother of defendants No. 3 to 6. It is averred that in the year 1969, the suit land was declared as Tenants Permissible Area under cultivation of the plaintiffs and their fore-fathers. They have also challenged order dated 25.10.2001 passed by the SDO-cum-A.C.Ist Grade-cum-Allotment Authority, Mandi Dabwali on the premise that the same is wrong, against law and facts, non est in the eye of law and liable to be set aside as revenue court cannot go behind the orders of the civil court.

The suit was dismissed by the trial court vide judgment and decree dated 10.11.2009 and appeal preferred by unsuccessful plaintiff-Surjeet Singh did not find favour with the District Judge, Sirsa as the same was dismissed vide judgment and decree dated 5.9.2011.

After arguing at length, counsel for the appellant would fairly concede that the civil court lacks inherent jurisdiction either to decide the question of plaintiffs being owners in possession of suit land on the basis of their claim that the land was declared as Tenants Permissible Area nor the order of eviction dated 25.10.2001 passed by the SDO-cum-A.C.Ist Grade-cum Allotment Authority, Mandi Dabwali in an application in Form 'L' filed by the private defendants/respondents is amenable to challenge before the civil court. He would pray that the appeal may be disposed of accordingly but any findings recorded by the courts touching merits of the case may not cause prejudice to right of the plaintiffs either in proceedings with regard to entitlement of the plaintiffs to suit land being Tenants Permissible Area or their entitlement to challenge order dated 25.10.2001 in

appropriate proceedings before a competent Fora.

Counsel for the contesting respondents No. 1 to 3 has not disputed that the civil court has got no jurisdiction to decide both the issues raised by the plaintiffs with regard to their being entitle to be declared as owners in possession of suit land qua Tenants Permissible Area or to assail the eviction order particularly in the circumstances that it is not plea of the plaintiffs that eviction order has been passed in violation of principles of natural justice or to say that they have not been given opportunity of being heard in the matter.

Counsel representing the State of Haryana has also not disputed contention of the appellants that the civil court lacks inherent jurisdiction to decide the matter in controversy.

I have heard counsel for the parties, perused the paper book and records.

Keeping in view the above, there remains no dispute that the civil court lacks inherent jurisdiction either to decide the question of ownership on the basis of Tenants Permissible Area or challenge to order dated 25.10.2001 for eviction of the plaintiffs in proceedings initiated on the basis of an application filed in form 'L'. That being so, the appeal filed by the appellant is bound to fail and is accordingly disposed of. As the civil court did not have jurisdiction to entertain and try the present suit, any findings recorded by the courts touching merits of the case would not cause prejudice to either of the parties in any proceedings filed before a competent authority, in accordance with law.

Surjeet Singh and Akshay Kumar have filed CR No. 1287 of

2015 to assail order dated 19.1.2015 passed by the Additional Civil Judge (Senior Division), Dabwali in case titled “Krishna vs. Om Parkash etc.”. A relevant extract from order dated 19.1.2015, reads as follows:-

“Today an application for issuing a notice to the Surety namely Akshay Nain son of Shri Subhash, resident of village Kharia, Tehsil Rania, District Sirsa has been moved. Let, notice of said application be issued to surety Aksay Nain for 9.2.2015. Warrant of attachment against the property of Surety be also issued for the date fixed.”

Counsel for the parties are ad idem that Surjeet Singh filed Civil Revision No. 4971 of 2004 by invoking Article 227 of the Constitution of India for quashing order dated 27.12.2001 passed by the Additional Civil Judge (Senior Division), Dabwali and dated 18.5.2004 by the Additional District Judge, Sirsa dismissing application of the petitioner therein for grant of interim injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for restraining respondents No. 3 to 6 therein from dispossessing the petitioner and proforma respondent Om Parkash from the land in dispute and recovering any rent from them in respect of the land in dispute. In the said case, an interim order dated 7.5.2007 (Annexure P1) was passed by this court whereby operation of the impugned order and dispossession of the petitioner was stayed subject to the condition of depositing security for mesne profits qua use and occupation of the land in dispute within two months of determination of quantum of mesne profits from the date of filing of the suit. In pursuance of the direction issued by this Court, the trial court

assessed mesne profits at the rate submitted by defendants No. 3 to 6 therein and the plaintiff was directed to furnish security to the extent of Rs. 16,66,453/- by 15.12.2007. By the time, the trial court passed the impugned order dated 19.1.2015, there was no order either passed by this court or by the trial court as to how the mesne profits assessed vide order dated 29.10.2007 are to be dealt with. On the contrary, Civil Revision No. 4971 of 2004 was eventually disposed of by this Court vide order dated 23.9.2009 (Annexure P-13) with the direction that while deciding the suit, the courts below should pass an order directing payment of mesne profits to the party that succeeds in the suit. Indisputably, though the suit was decided by the trial court on 10.11.2009 and the same was dismissed but the trial court did not pass an order with regard to payment of mesne profits. In the given scenario, in absence of order passed by a competent court with regard to payment of mesne profits to either of the parties to the suit, the court was not competent to proceed against the surety or order for attachment of property of surety in execution of surety bond furnished by Akshay Kumar petitioner No. 2. In this view of the matter, order dated 19.1.2015 cannot be allowed to sustain and accordingly set aside but without prejudice to right of the private defendants-respondents to file an appropriate application before the trial court for passing an appropriate order with regard to payment of mesne profits. In case, such an application is filed by the private respondents, the same shall be decided by the court after providing an opportunity of being heard to the plaintiffs namely Om Parkash and Surjeet Singh, in accordance with law.

In view of what has been discussed hereinbefore, RSA No.

4395 of 2011 is dismissed. However, Civil Revision No.1287 of 2015
stands disposed of with the aforesaid observations.

(Rekha Mittal)
Judge

20.11.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No