

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA no.824 of 2011
Date of decision: 27.09.2018

Kasturi Lal and another

...Appellants

versus

Bhura Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. Munish Jolly, Advocate
for the appellants.

AMOL RATTAN SINGH, J.

1. This is the second appeal of two of the five plaintiffs who had instituted a suit against respondents no.1 and 2 herein, as also the predecessor-in-interest (father) of respondents no.3 to 7.

By their suit, the appellants had sought a decree of permanent injunction against the defendants against alienating their share out of 241 kanals 6 marlas of land as was fully described in the plaint, falling in the area of village Dhulkot, Tehsil Barnala. They also sought an injunction against the defendants from raising any construction over any specific portion of the suit property thereby changing its nature, on the ground that they (plaintiffs) were also co-owners thereof.

The suit having been dismissed by the trial Court, with that judgment upheld by the Ist appellate Court, the present second appeal has come to be filed.

2. As per the case of the appellants, appellant no.1 had a share to the extent of 110/2413, with their co-plaintiff Hazura Singh (now proforma

respondent no.8), having a share to the extent of 100/2413, and the remaining three plaintiffs, including appellant no.2, having a share to the extent of 90/2413 in the suit land.

Such share was stated to have fallen upon them as the legal heirs of one Surjit Singh, father of appellant no.2 (Bhinder Singh).

However, it was further contended by the plaintiffs that the defendants started alleging that they were owners of the entire property on the basis of a judgment and decree dated 30.05.1995, passed in Civil Suit no.495 of 04.09.1991, consequent upon which mutation no.12681 had been entered in the revenue record.

Hence, as per the plaintiffs, the defendants by taking undue benefit of the aforesaid judgment and decree, in order to cause loss to the plaintiffs, without getting the suit property partitioned, were threatening to alienate specific *khasra* numbers and “previous portion of the suit property” to other persons and were threatening to raise construction over a specific portion, thereby changing the nature of the suit land.

As per the plaintiffs the said judgment and decree and the mutation was not binding upon them, despite which the defendants were forcibly threatening them.

3. Notice of the suit having been served upon the defendants, defendant no.3 is stated to have died during the pendency of the suit but with his legal heirs thereafter not having appeared despite service, leading to their proceeded against *ex parte*. The said LRs are respondents no.3 to 7 in this appeal, though one of them, i.e. respondent no.7, is not seen to have been impleaded as such before the trial Court.

4. Respondents/defendants no.1 and 2 duly appeared and filed a

joint written statement, taking preliminary objections with regard to non-maintainability of the suit etc. and further, that nothing had been shown as to why the judgment and decree dated 30.05.1995 was erroneous.

On merits, they contended that actually the plaintiffs had no concern with the suit property, whereas they themselves were the owners-in-possession thereof, and consequently, the aforesaid decree dated 30.05.1995 had been correctly passed, with the defendants also entitled to alienate their share.

5. On the aforesaid pleadings the following issues were framed by the trial Court:

- (1) Whether plaintiffs are in possession of the suit property?
OPP
- (2) Whether plaintiffs are entitled to injunction as prayed for?
OPP
- (3) Whether the suit is vague, if so, its effect? OPD
- (4) Relief.

6. The plaintiffs examined plaintiffs no.1 and 2 (i.e. appellant no.1 and respondent no.8) and one Teja Singh, Nambardar.

The defendants examined respondent/defendant no.1, Bhura Singh.

The defendants, by way of documentary evidence, relied upon a judgement dated 14.05.2001 (Ex.D1), another judgment dated 01.05.2006 (Ex.D3), yet another judgment dated 14.02.2006 (Ex.D4), and an application and order passed earlier (Ex.D2 and Ex.D6 respectively).

The plaintiffs by way of documentary evidence relied upon a sale deed dated 27.05.1995 (Ex.P3), a *jamabandi* (record of rights) for the year 1995-1996 (Ex.P4), the judgment earlier referred to, dated 30.05.1995 (Ex.P5), a decree sheet, an execution application with warrants of possession

and also two orders and a *jamabandi* for the year 2000-2001 (Ex.P9).

6. Having appraised the aforesaid evidence, the learned trial Court found that three sale deeds had been executed by defendant no.3, Balwinder Singh, as also Joginder Singh, Harpal Singh, Sukhwinder Singh and Surjit Kaur, all being successors-in-interest of Natha Singh, such sale deeds being in favour of the plaintiffs.

The *jamabandi* for the year 1995-1996 showed the aforesaid persons, i.e. Balwinder Singh etc., had a 13/19304 share in the suit property, as the widow and sons of Natha Singh.

It was further found that defendants no.1, 2 and 3, i.e. Bhura Singh, Jagan Singh and Bhajan Singh, had filed the aforesaid Suit no.495 of 04.09.1991, against Sarup Singh and 75 others. In that suit the case of the plaintiffs (Bhura Singh etc.) was that alienation of land made by Sarup Singh in favour of 22 defendants in that suit, was “against the rights” of the plaintiffs as also defendants no.2 to 54 in that suit, as defendant no.1 Sarup Singh had sold more than his share to defendants no.55 to 76.

Natha Singh was also a defendant in that suit, which was decreed on 30.09.1995, with execution proceedings having been initiated by Bhura Singh and a 27/32 share of the suit property in that suit having also been taken possession of by the decree holders.

Thereafter, mutation of an exchange of ownership was entered, at the aforementioned serial. no.12681.

It was further found by the trial Court (in the present *lis*) that vide the aforesaid judgment and decree dated 30.05.1995, the defendants were held to be co-sharers in the suit property, to the extent of a 5/32 share.

7. Having recorded that, it was next observed by the trial Court that

whether the defendants were held to be co-sharers rightly or wrongly, could only be gone into if that judgment and decree had been specifically challenged, with neither that nor the subsequent mutation actually so challenged.

It was further observed that the predecessor-in-interest of defendant no.3 in the present *lis*, i.e. Natha Singh, was proceeded against *ex parte* in that *lis* and the plaintiffs being vendees who had purchased the land from the successors-in-interest of Natha Singh, the only option was that they had to move the Court seeking the setting aside of the decree dated 30.05.1995, whereas the present suit was only one seeking a decree of permanent injunction.

Hence, the defendants in the present *lis* having a decree in their favour in the previous suit, the plaintiffs (in the present *lis*) were not entitled to seek any decree of permanent injunction.

Consequently, the suit was dismissed.

9. In the first appeal filed against that judgment and decree, by all five plaintiffs, the learned Additional District Judge, after noticing the fact and the evidence led by the parties, then noticed that the whole claim of the appellants/plaintiffs was based on the sale deed executed by the successors-in-interest of Natha Singh, one of the co-sharers of the suit land, with the sale deeds themselves had been proved by the plaintiffs as Exhibits P1 to P3.

The venders from whom they purchased the property were also proved to be the legal heirs of Natha Singh, as per the *jamabandi* for the year 1995-1996 (Ex.P4), with them possessing a 13/19304 share in the property.

On the contrary, the claim of the respondents/defendants was based on the judgment and decree dated 30.05.1995, passed in Civil Suit

no.495 of 1991, a perusal of which showed that it was a suit seeking a declaration as also an injunction, with the defendants in the present *lis*, being the plaintiffs in that suit, challenging the alienation made by Sarup Singh to defendants no.55 to 76 in that suit.

10. Like the trial Court, the Ist appellate Court also came to the conclusion that on the basis of the aforesaid judgment and decree dated 30.05.1995, respondents/defendants no.1 and 2 herein, as also one Sajjan Singh, had taken possession of a 27/32 share in the suit land by way of execution proceedings.

During such execution proceedings also, 10 persons had filed an application under Sections 47, 144 and 151 of the CPC, for setting aside the *ex parte* warrant of delivery of possession and for re-delivery of such possession of land measuring 243 kanals and 13 marlas.

The executing Court in that case, however, had observed that they could file a separate suit for taking possession of the suit property.

The said application of the those persons and the observation of the execution Court was taken by the Ist appellate Court (in the present *lis*), to be proof enough of the fact that the plaintiffs in that suit (defendants in the present suit) had taken possession of the suit property.

11. It was further found that the 1st respondent-defendant herein, Bhura Singh, alongwith others had also filed a suit, with even a suit filed by one Gurdev Singh and others, bearing Civil Suit no.551 of 20.12.2001, which was also dismissed on 14.02.2006, such suit being one seeking to restrain the defendants herein, i.e. Bhura Singh and Jagan Singh, from raising construction over land measuring 241 kanals 6 marlas.

In that suit it was also observed by the trial Court that Gurdev

Singh, etc. (plaintiffs therein) had not disclosed that their possession of the suit property had actually been disturbed pursuant to the execution of the warrants of possession issued by the execution Court, pursuant to the judgment and decree dated 30.05.1995.

The appeal against the judgment in that suit was found to have been dismissed for non-prosecution on 03.11.2006. (A copy of that order having been produced by the defendants in the present *lis* as Ex.D6).

12. The learned Ist appellate Court further recorded a finding that vide the aforesaid judgment and decree dated 30.05.1995, the respondents/defendants were held to be co-sharers to the extent of their shares to whom even possession of the suit property had been delivered.

Hence, it was further held that vide the present suit, the plaintiffs, even as successors-in-interest of Natha Singh (defendant no.12 in the suit decided on 30.05.1995), could not actually “dispute” physical possession delivered pursuant to that decree, simply by seeking a decree of permanent injunction.

What was held by the trial Court was repeated by the Ist appellate Court, that neither the judgment and decree dated 30.05.1995, nor the mutation entered thereafter, having been challenged by the appellants/plaintiffs, with it not having been established at all that Natha Singh, from whose successors-in-interest the appellants had purchased the suit land, was actually ever in possession of the land. Therefore, simply on the basis of the sale deed, relief of permanent injunction could not be granted.

Consequently, the Ist appeal of the present appellants and their co-plaintiffs was dismissed.

14. Before this Court, though Mr. Jolly, learned counsel for the

appellants, submitted that the plaintiffs as co-sharers could not be dispossessed from the suit land, upon specific query to him as regards the finding that the present respondents/defendants were actually delivered possession of the suit property in execution proceedings pursuant to the decree dated 30.05.1995, he was unable to show that such possession was actually not delivered.

That being so, and the appellants contending to be co-sharers of the suit property, firstly, they cannot seek a decree of permanent injunction against another co-sharer unless they can show from the record, their specific possession of the suit land; and though, similarly, their co-sharer also otherwise cannot seek a decree of permanent injunction against them till the suit property is partitioned, yet physical possession of the suit property having been shown to be delivered to the respondents herein pursuant to execution proceedings *qua* the decree dated 30.05.1995, in any case a decree of permanent injunction could not have been issued to the appellants/plaintiffs.

In other words, without proving that they were ever in actual possession of the suit land, the appellants/plaintiffs cannot seek a decree of permanent injunction against a co-sharer and in any case not against a co-sharer who is proved to be in possession of any specific part of the suit land pursuant to a decree in his favour in any previous *lis*.

15. Consequently, with the appellants always at liberty to seek partition of the suit land to the extent of their share, as regards the decree of permanent injunction sought by them, even *qua* changing the nature of the suit property, I find no ground to interfere in the judgments/decrees of the learned Courts below, with the respondents/defendants having been specifically found to have been put in possession of their share in the suit land pursuant to a

decree earlier issued in their favour, with no challenge to that decree having been made at any stage by the present appellants/plaintiffs. Thus, obviously, simply by filing a suit seeking permanent injunction, the appellants cannot seek the setting aside of the judgment and decree dated 30.05.1995 or the mutation entered in the revenue record pursuant to the effect of that decree.

Hence, this appeal is dismissed.

Civil Misc. No.2290-C of 2010 &
Civil Misc. No.2289-C of 2010

The appeal having been dismissed on merits, though otherwise there would be no reason to not condone the delay of 66 days in filing the appeal and 79 days in re-filing it, for the reasons given in each of the applications, these applications have been rendered infructuous and are disposed of as such.

27.09.2018
dharamvir/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether reportable	No