

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

**R.S.A No.188 of 2016(O&M)**

**Date of decision :24.09.2018**

**Sukhjinder Kaur**

**..... Appellant**

**Versus**

**Basheshar Nath and others**

**..... Respondents**

**CORAM : HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr.N.K.Manchanda, Advocate  
for the appellant.

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**LISA GILL,J**

The present appeal has been filed by Sukhjinder Kaur, who was admittedly not a party to the proceedings in the suit which was filed by the plaintiff-Hari Singh (respondent no.2 in this appeal). Suit filed by Hari Singh was dismissed as per provisions of Order 17 Rule 3 CPC. Counter claim filed by defendant no.29 was decreed with cost vide the impugned judgement and decree dated 25.03.2011. Appeal filed by the present appellant-Sukhjinder Kaur was dismissed by the learned Additional District Judge, Ferozepur vide judgement and decree dated 04.05.2015. Aggrieved therefrom, appellant has filed this appeal.

Brief facts necessary for the adjudication of the case are that a suit for declaration was filed by Hari Singh-plaintiff against defendant-respondent no.1 (since deceased represented through his legal heirs) to the effect that Hari Singh became owner in possession of the suit property as detailed in the plaint by way of adverse possession. Consequential relief of permanent injunction for restraining defendant-respondent no.1 and others from interfering in his possession, was also prayed for. The

suit filed by Hari Singh was dismissed as per the provisions of Order 17 Rule 3 CPC.

Counter claim was preferred by Bisheshar Nath-respondent no.1 (since deceased) in the present appeal and defendant no.29 in the suit filed by Hari Singh, who claimed to be the owner of the suit land thereby entitled to possession of the suit property. Recovery of *mesne* profits at the rate of ₹10,000/- per acre per annum from the date of filing of the suit was also claimed.

The counter claim filed by defendant no.29 was contested by the plaintiff-respondent. He filed a written statement to the counter claim while stating that the name of Subhash Chander was shown in the revenue record as one of the co-sharer, but the plaintiff had perfected his title by way of adverse possession with the lapse of time. Subhash Chander, it was pleaded was not competent to execute any sale deed as he was not in possession of any part of the suit land. Plaintiff claimed possession of the suit property even prior to 1985.

Rejoinder to the written statement was filed by the counter-claimant. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is in possession of the suit land and is entitled to the relief of declaration that he has become owner by way of adverse possession of the suit land?OPP
2. Whether the plaintiff is entitled to the consequential relief of permanent injunction for restraining the defendants from interfering with the possession of the plaintiff and for restraining the defendant no.29 from alienating the suit land in any manner?OPP
3. Whether the present suit is bad for nonjoinder and misjoinder of the necessary parties?OPD

4. Whether the defendant no.29 has become absolute owner of the land having purchased the same from previous owner vide sale deed dated 10.07.1997?OPD 29.
5. Whether defendant no.29 is entitled to the possession of the suit land as alleged?OPD29.
6. If the issue no.4 is proved, whether the defendant no.29 is entitled to mesne profits at the rate of Rs.1000/- per killa per year from the date of purchase i.e. 10.07.1997?OPD
7. Relief.

Both the parties were afforded opportunity to lead their evidence in support of their respective claims. Evidence of plaintiff-Hira Singh was closed by order on 10.09.2003 and the case was fixed for evidence of defendant no.29-counter claimant.

It is pertinent to note that during the pendency of the case, defendant no.29-counter claimant died and on moving application, legal heirs of defendant no.29 were brought on record. Plaintiff-respondent was proceeded against *ex parte* vide order dated 31.08.2004.

Evidence was led by the counter claimant seeking *mesne* profits at the rate of ₹10,000/- per acre per annum. It was held by the learned trial Court vide judgement and decree dated 25.03.2011 that defendant no.29-counter claimant successfully proved his case. Therefore, it was held that the counter claimant was entitled to *mesne* profits at the rate of ₹10,000/- per acre per annum from the date of filing of the counter claim till the delivery of the possession subject to deposit of the Court fee by the counter claimant. It was further directed that the plaintiff-Hari Singh should handover possession to the counter claimant within four months from the date of decree.

During the pendency of the proceedings, an application

under Order 1 Rule 10 CPC was moved by the present appellant-Sukhjinder Kaur for being impleaded as a party on the ground that the suit property was purchased by her during the pendency of the proceedings vide registered sale deed dated 31.05.2004. It is to be noted that the civil suit in question was filed by Hari Singh on 12.06.1998. It was further averred by Sukhjinder Kaur that possession of the suit land was delivered to her at the spot by Mohinder Partap Singh, who was a co-sharer in the Khewat. Therefore, she had become a co-sharer in possession of the suit property. It was further averred that though Hari Singh was claiming his possession over the suit property, but the same had been in-fact been delivered to the present appellant by Mohinder Partap Singh. Therefore, respondent-Bisheshar Nath could not claim possession of the suit property.

Appellant-Sukhjinder Kaur, filed an appeal against the judgement and decree dated 25.03.2011, passed by the learned Civil Judge (Jr. Division), Ferozepur. The said appeal was dismissed by the learned Additional District Judge, Ferozepur, vide judgement and decree dated 04.05.2015. It was held that the purchase of the property by the present appellant is hit by the principle of doctrine of *lis pendens*.

Aggrieved therefrom, the present appeal has been filed by the present appellant-Sukhjinder Kaur.

Learned counsel for the appellant submits that grave prejudice will be caused to the appellant, in case, the present appeal is not allowed. It is submitted that application of the appellant under Order 1 Rule 10 CPC was not disposed of and the matter was allegedly

adjudicated by the learned trial Court without impleading the appellant as a party to the suit. It is thus prayed that the impugned judgement and decree dated 25.03.2011, passed by the learned Civil Judge (Jr. Division), Ferozepur, as well as judgement and decree dated 04.05.2015, passed by the learned Additional District Judge, Ferozepur, be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is not in dispute that the present appellant-Sukhjinder Kaur was not a party to the suit. It is specifically observed by the learned Additional District Judge, Ferozepur, that the application under Order 1 Rule 10 CPC filed by the appellant was adjudicated upon and disposed of by the learned trial Court on 08.03.2011. The appellant did not challenge the said order, but an appeal against the judgement and decree dated 25.03.2011 was preferred by her. Learned Additional District Judge, Ferozepur, rightly observed that the matter between the predecessor-in-interest of Sukhjinder Kaur and the persons who are party to the appeal stood decided by the learned trial Court. Therefore, setting up a separate claim by way of filing the appeal before the learned Additional District Judge was rightly held to be without any substance. The appellant in her own words is the successor-in-interest of the co-sharer-Mohinder Partap Singh. It is rightly held by the learned Additional District Judge, Ferozepur that Mohinder Partap Singh from whom Sukhjinder Kaur being the successor-in-interest, claims title has not come forward to challenge the verdict of the learned trial Court. Appellant thus cannot claim any independent right in the present proceedings. Appeal filed by

her has been rightly dismissed. Judgment and decree dated 25.03.2011 passed by the learned trial Court cannot be set aside, at her instance, in this manner.

Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgements and decree dated 25.03.2011 and 04.05.2015 passed by the learned Civil Judge (Jr. Division) Ferozepur and learned Additional District Judge, Ferozepur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

**24.09.2018**

s.khan

**(LISA GILL)  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No