

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

RSA NO. 2415 OF 2016 (O&M)

DATE OF DECISION: OCTOBER 22, 2018

Jaswinder Singh and another

.....Appellants

Versus

Surinder Singh and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.KS Cheema, Advocate for the appellants.



TEJINDER SINGH DHINDSA, J.

CM No.6409-C of 2016

In view of the averments made in the application duly supported by an affidavit, the delay of 18 days in re-filing the appeal is condoned.

2. Application disposed of.

Main case

3. A suit filed by the plaintiffs seeking Rs.10 lakhs by way of damages on account of filing and foisting false and frivolous litigation was dismissed by the trial Court on 8.1.2015. A civil appeal preferred has met the same fate in terms of judgment dated 23.10.2015 passed by the learned Additional District Judge, Hoshiarpur.

4. Resultantly, the plaintiff-appellants are in second appeal before this Court.

5. Brief facts on which the suit had been filed were that

Smt.Joginder Kaur, mother of plaintiff No.1-Jaswinder Singh as also of defendant No.2-Surinder Singh was owner in possession of land measuring 34 kanals 5 marlas situated at village Muggopatti, Police Station Mahilpur. It was averred that Smt.Joginder Kaur suffered a stroke on 4.5.1998 and was admitted in a hospital in London. Defendant No.1-Surinder Singh being the son of Smt.Joginder Kaur and on account of greed took her out of the hospital/Nursing home on some pretext on 9.7.2002 and got prepared a forged power of attorney alleged to have been executed by the mother in his favour. Defendant No.1 on the basis of such alleged forged power of attorney executed the sale-deed of the entire land in favour of his wife, defendant No.2-Smt.Rajwant Kaur on 16.9.2002 and also got the mutation sanctioned in favour of his wife. It was alleged that such power of attorney and sale-deed are illegal and void. At that stage, Smt.Joginder Kaur being of unsound mind through her next friend, Shri Jaswinder Singh-plaintiff filed a suit for declaration to the effect that she is owner in possession of the land aforementioned and that the alleged sale-deed executed by defendant No.1 in favour of defendant No.2 is null and void. Such suit was filed on 8.6.2004. At that stage, defendant No.2-Smt.Rajwant Kaur also filed civil suit No.815 of 2004 on 8.10.2004 against the plaintiff-appellants herein for permanent injunction claiming that she is owner in possession of the suit land and the appellants herein be restrained from interfering in her possession. The suit filed by defendant No.2 is stated to have been dismissed by the Additional Civil Judge (Senior Division), Hoshiarpur vide judgment and decree dated 16.1.2006. It was further averred that defendant No.2-Smt.Rajwant Kaur concealed the factum of dismissal of her suit and

filed a civil suit qua the same very property at Garhshankar and sought permanent injunction against the plaintiff-appellants. Subsequently, Rajwant Kaur-defendant No.2 also filed civil appeal against judgment and decree dated 16.1.2006 passed by the Additional Civil Judge (Senior Division), Hoshiarpur and such appeal was dismissed on 2.3.2007 by the Additional District Judge, Hoshiarpur. On the other hand, the suit filed by Smt.Joginder Kaur through plaintiff-appellant Jaswinder Singh was decreed vide judgment and decree dated 14.11.2007. Reference was made to yet another round of litigation initiated by defendant No.1-Surinder Singh seeking permanent injunction qua a kothi being constructed by plaintiff No.1-Jaswinder Singh. Even such suit is stated to have been dismissed on 8.2.2006 for non-prosecution.

6. Learned counsel for the appellants would argue that the facts in themselves as also the various suits filed at the hands of the defendant – respondents herein would demonstrate that false and vexatious claim had been set up. On account of such litigation, plaintiff-appellant No.1 Jaswinder Singh had to travel to India on numerous occasions and had to spend lakhs of Rupees in defending litigations. It is vehemently contended that the suit of the plaintiff-appellants ought to have been decreed and appropriate damages should have been awarded in their favour on account of foisting of false and vexatious cases against them.

7. Having heard learned counsel for the appellants, this Court is of the considered view that no basis for interference is warranted.

8. Concededly, plaintiff-appellant No.1 and defendant-respondent No.1 are real brothers. The dispute is essentially with regard to land which

was in the ownership of their mother Smt.Joginder Kaur. It has also gone uncontroverted that not only were the cases instituted at the hands of the defendant-respondents but were even filed by plaintiff-appellant No.1 in respect of the same very property.

9. Both the Courts below have rightfully held and taken a view that the suits are filed for vindication of the rights of the parties and to assert their claim as may be admissible in accordance with law. Merely for the reason that a suit filed by one of the contesting parties having succeeded and the lis initiated at the hands of the opposite/contesting party having failed would not, in itself, be sufficient to reach a conclusion that false and vexatious litigation had been initiated.

10. Learned counsel representing the appellants has, during the course of hearing of the instant appeal, apprised the Court that the matter/dispute as regards the suit land between the brothers has since been adjudicated upon. Under such circumstances, this Court is not inclined to propel the parties into yet another round of acrimonious litigation for award of damages. A quietus in the matter involving two real brothers would be the appropriate course of action.

11. The judgments passed by the Courts below are founded on valid and cogent reasons. The appeal does not raise any question of law.

12. Dismissed.

(**TEJINDER SINGH DHINDSA**)
JUDGE

OCTOBER 22, 2018

SRM

Note: *Whether speaking/reasoned:* *Yes/No*

Whether Reportable: *Yes/No*