

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

RSA No.3451 of 2015

Date of Decision.30.05.2018

Jot Ram

...Appellant

Vs

Balbir Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Naveen Sharma, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for declaration to the effect that he was owner in exclusive possession of the suit land situated in village Saluni (hereinafter called as “suit property”) by challenging the judgment and decree dated 24.10.1998 passed in Civil Suit bearing No.302 of 1998 titled as “Sampat Ram Vs. Balbir and another” with consequential relief of permanent injunction restraining the defendants from interfering in his exclusive possession and from alienating or transferring the suit property had been dismissed by the trial Court and upheld by the lower Appellate Court.

It was pleaded by the plaintiff that his father Phool Chand along with his grand father Ram Sahai and great-grand father Hanuta constituted a joint Hindu Family being ancestral/coparcenary in the hands of his grand father Ram Sahai. Phool Chand was the only son of Ram Sahai. After the death of Hanuta, the property owned by him was inherited by his sons namely Ram Sahai, Maru and Parbhu. Phool

Chand had a birth right in the suit land owned by his father Ram Sahai. Mutation regarding inheritance of Ram Sahai was wrongly sanctioned in the name of Phool Chand, Smt. Anarali, Smt. Chalti and Smt. Surasti, for, they were married and residing in their matrimonial homes and had no right to inherit the estate of their father Ram Sahai. A compromise was arrived at between Phool Chand and sons/daughters of Anarali, Chalti and Surasti that they relinquished their share in the suit land in favour of Phool Chand. Phool Chand filed a civil suit bearing No.165 of 1975 titled as 'Phool Chand Vs. Siri Ram" which was decreed on 04.08.1975 and the mutation bearing No.649 was also sanctioned on the basis of the aforementioned decree. However, Balbir and Smt. Banarsi filed a civil suit bearing No.63 of 1998 titled as "Balbir and another Vs. Phool Chand" challenging the decree dated 04.08.1975, which was decreed vide judgment and decree dated 03.01.1992, in essence, the decree dated 4.8.1975 qua 1/3rd share of Balbir and Smt. Banarsi was set aside. The civil appeal bearing No.18 of 1992 was dismissed by the Additional District Judge, Narnaul on 26.9.1996. The regular second appeal bearing No.3098 of 1996 filed in this Hon'ble Court was also dismissed on 27.8.1997. Even Special Leave Petition was also dismissed on 15.7.1998.

Phool Chand during the pendency of the regular second appeal died and executed a legal and valid Will dated 6.9.1994 in favour of Jot Ram, plaintiff. He was impleaded as legal representative of his father in the above said RSA and SLP. Civil suit titled as "Jot Ram Vs. Balbir and another" was filed. However, during the pendency of the civil suit, he came to know that defendants No.1 and 2

had suffered a decree dated 24.10.1998 with regard to 1/3rd share of the suit land in favour of defendant No.3, which was illegal and void, for, no family settlement had taken place as the plaintiff throughout remained in continuous possession of the entire suit land, which had ripened into ownership by way of adverse possession.

The aforementioned suit was contested by the defendants by denying status of the property to be ancestral. The mutation regarding inheritance of Ram Sahai was legally and validly sanctioned in favour of his three daughters, for, Phool Chand did not inherit any land from his father i.e. Ram Sahai. The suit filed by the plaintiff with regard to the suit land without withdrawal of the previous civil suit, filed on 21.6.1999, therefore, there was no cause of action. The plaintiff was wrongly recorded to be owner qua 2/3rd share out of the suit land. However, Phool Chand separated from the family during the life time of his father Ram Sahai. He was Nambardar of the village and therefore, manipulated revenue entries. Even the suit filed by Phool Chand was dismissed as indicated above. The exclusive possession of Phool Chand or Ram Sahai was emphatically denied and as well as the execution of the Will dated 6.2.1994.

Since the parties were at variance, the trial Court framed as many as eight issues including the issue of relief. The plaintiff examined six witnesses and brought on record documents Ex.P1 to P18. On the other hand, defendant examined two witnesses and brought on record documents Ex.D1 to D4.

The trial Court on the basis of the evidence brought on record dismissed the suit by holding that it was hit by Order 2 Rule 2

CPC. The plaintiff was entitled to seek complete relief in the previously instituted suit and once he omitted to do so, without permission from the Court he cannot institute the suit in respect of the same cause of action. The appeal preferred before the lower Appellate Court also met with the same fate.

Mr. O.P. Goyal, Ld. Senior Counsel assisted by Mr. Naveen Sharma, learned counsel appearing for the appellant-plaintiff submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the Courts below have not appreciated the fact that the plaintiff was not the party in the previous proceedings. Even application under Order 41 Rule 27 CPC was filed before the lower Appellate Court for placing on record documentary evidence to establish that the property was ancestral in nature, therefore, the findings of the Courts below that the suit property was not ancestral in nature are neither here nor there and liable to be set aside. The permission for filing fresh suit at the time of earlier suit was not necessary, therefore, the suit could not have been dismissed under Order 2 Rule 2 CPC. The present suit had been filed in the year 2002 whereas the Supreme Court dismissed the SLP in 1998 with different parties and different relief, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goyal, for, the previous suit filed by the plaintiff i.e. Civil Suit No.504 of 1999 titled “Jot Ram Vs. Balbir Singh and others” was withdrawn without obtaining permission, therefore,

another suit on the same cause of action was not maintainable. The decree dated 24.10.1998 passed in civil suit No.302 of 1998 was in existence at the time of filing of civil suit No.504 of 1999. The plaintiff should have included the claim by laying challenge to the decree dated 24.10.1998. The nature and character of the property to be ancestral has not been proved. Mere submission of application for additional evidence would not suffice the requirement of law, for, the application was dismissed on the ground that dispute with regard to nature of property had already come to rest. The plaintiff also claimed adverse possession in affirmative, which is not permissible in the eyes of law as the plea of adverse possession can always be taken in defence by taking the aid of Article 65 of the Limitation Act by proving on record continuous, uninterrupted and hostile possession.

All these factors weighed in the mind of the Courts below while arriving at concurrent finding of fact and law. The argument of Mr. Goyal has not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 30, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No