

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

RSA No.4485 of 2017 (O&M)

Date of decision: 23.08.2018

Anguri

.. Appellant

vs.

Baljeet and others

.. Respondents

Coram: **Hon'ble Mr. Justice Harinder Singh Sidhu**

Present:- Mr. K.C. Rajput, Advocate
for the appellant.

Harinder Singh Sidhu, J.

This Regular Second Appeal has been filed by the plaintiff-appellant impugning the order dated 12.12.2016 passed by the Ld. District judge, Sonapat whereby the judgment and decree of learned Trial Court decreeing the suit of the plaintiff for permanent injunction has been reversed and the suit of the plaintiff has been dismissed.

The plaintiff instituted the suit for a decree of permanent injunction for restraining the defendants-respondents from interfering in the lawful and peaceful possession of plaintiff over the Gitwar/plot, as depicted in red colour with letters ABCD. The case of the plaintiff was that the suit property was being used by the plaintiff and her ancestors for domestic purposes. The defendants were seeking to encroach upon the suit property relying on the partition proceedings in the case titled as Pale Ram Vs. Raghbir Singh decided on 29.07.1999, whereas the suit property is not a part thereof.

The case of the defendant was that the defendant is owner in possession of the suit property. The suit property is part of plot No.1 and 2, which was allotted to the defendants in partition suit Pale Ram Vs. Raghbir Singh.

Learned Trial Court decreed the suit holding that the plaintiff had discharged the burden of proving her possession over the suit property by oral and documentary evidence. In view thereof, the burden of proof shifted to the defendants to show that the plaintiff was not in possession of the suit property and they were the owners. It was noted that in the written statement, the defendants had pleaded that the suit property was part of plot Nos.1 and 2. However, defendant No.3 in his examination-in-chief has stated that suit property was part of plot No.4 measuring 258 sq. yards allotted to him in the partition proceedings. The Court thereby concluded that defendants who claim to be owners in possession of the suit property themselves were not certain regarding its identity as they are not aware as to whether it falls in the domain of plots no.1 and 2 or plot no.4. Hence the suit was decreed.

The learned Lower Appellate Court reversed the finding holding that the plaintiffs had failed to discharge the burden of proof that she was owner as well as in possession of the suit property. The Panch, Sarpanch or Numberdar of the village could have been natural witnesses who could have supported the claim of the plaintiff qua her title or possession over the disputed property. Similarly the neighbourers who were having their properties adjacent to the suit property as well as the mason who had constructed the boundary wall of the suit property could have been examined. The Court further held that as the defendants were basing their claim on the basis of the partition proceedings, the remedy available to the plaintiff was to file objections under Order 21 Rule 97 CPC. As the efficacious remedy contemplated in the aforesaid provisions was available to the plaintiff, the suit for permanent injunction was not maintainable in

view of Section 41(h) of the Specific Relief Act. Thus, the findings of the learned Trial Court were reversed and the suit of the plaintiff was dismissed.

It is not denied that the plaintiffs and some others had filed objections against the judgment and decree dated 12.05.2009, which were been dismissed by the Trial Court after framing issues. Against the aforesaid order, as many as 17 revision petitions were preferred including one filed by the present plaintiff. The said revision petitions were dismissed as withdraw with liberty to avail the remedy of appeal vide order dated 08.02.2018 passed in CR No.6799 of 2015 'Balbir Vs. Pale Ram (deceased through LRs) and others'.

Learned counsel for the appellant states that the appellant has filed appeal, which is pending. As the appeal of the plaintiff against the order dismissing her third party objections is already pending, there is no merit in the present appeal which was rightly dismissed by learned Lower Appellate Court holding that the suit for permanent injunction was not maintainable in view of bar under Section 41(h) of the Specific Relief Act.

Dismissed.

23.08.2018
Atul

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No