

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

**RSA No.4736 of 2019 (O&M)
Date of decision: 22.10.2019**

Tarsem Kumar and others

.....Appellants

Versus

Amar Nath and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surinder Sharma, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.13497-C of 2019

For the reasons mentioned in the application, same is allowed and
delay of 426 days in re-filing of the appeal is condoned.

RSA No.4736 of 2019 (O&M)

This appeal has been filed against the judgment dated 03.02.2018
passed by the Additional District Judge, Jalandhar, dismissing an appeal
filed by plaintiff-appellants (hereinafter referred to as 'the plaintiffs') against
the judgment and decree dated 23.02.2015 passed by the Civil Judge (Junior
Division), Jalandhar, whereby suit filed by them (plaintiffs) has been
dismissed.

Tarsem Kumar etc.-plaintiffs (appellants herein) filed a suit for
possession by way of partition of the suit land with the averments that total
property measuring 280 Marlas, comprised in Khasra Nos.118 and 133 was
purchased by Harbhagwan, Kanshi Ram, Yogi Raj and Amar Nath. After
the death of Kanshi Ram and Harbhagwan, plaintiff Nos.1 and 2 inherited

their rights. Property in the hands of plaintiffs and defendants remained joint and the plaintiffs remained co-owners in the entire property. Rights of Harbhagwan had been inherited by plaintiff No.2 and other legal heirs of Harbhagwan have already relinquished their rights. Rights of Kanshi Ram have been inherited by plaintiff Nos. 1 and 2 and mutation, in this regard, has already been sanctioned in their favour. General power of attorney has already been executed in favour of plaintiff No.1 by all the legal heirs of Kanshi Ram. It was further stated that Prem Pal had died and his legal heirs had been impleaded as defendant No.2. A dispute arose when Improvement Trust, Jalandhar started acquiring the property of the plaintiffs. Out of the total land/property, the trust had acquired 280 Marlas of land. Plaintiffs had earlier filed suits against the Improvement Trust, Jalandhar and Land Acquisition Collector, wherein Amar Nath was impleaded as one of the defendants. All the suits were consolidated and were decided by the Court of Sh.Rajinder Aggarwal, Addl. Civil Judge (Senior Division), Jalandhar vide judgment dated 05.03.2005 and it was held that Jalandhar Improvement Trust acquired 280 Marlas of land, for which, disputes were pending. It was further held that no partition of the property had been effected between the plaintiffs and defendants. Out of the entire land/property, 73 Marlas of land out of Khasra No.133 was exempted by the Improvement Trust, Jalandhar. The exempted property is comprised in plots No.364, 364-A and 377. It was held that the plaintiffs and defendants were co-owners of the exempted land and the entire land measuring 280 Marlas was acquired, except the land measuring 3 Kanals and 13 Marlas out of Khasra No.133. The case of the plaintiffs was that in the entire land, which was exempted by the Improvement Trust, Jalandhar, they (plaintiffs) were also co-owners and

were entitled to claim their share from the defendants. It was further pleaded that the plaintiffs had also filed a suit for permanent injunction, which was decided by the Court of Sh. Randhir Verma, Civil Judge (Junior Division), Jalandhar on 30.05.2005. Another suit filed against the Jalandhar Improvement Trust was decided by the Court of Sh. P.S. Bajaj on 13.03.1992 and no other case was filed or pending between the plaintiff and the Jalandhar Improvement Trust. When the plaintiffs had requested the defendants to get the suit property partitioned, they had refused to do so. Hence, the suit.

Upon notice, defendants (respondents) filed written statement taking preliminary objections with regarding to maintainability, suit barred by Order 2 Rule 2 CPC etc. It was stated that the land measuring 03 Kanals 13 Marlas, out of Khasra No.133, had fallen to the share of defendant No.1 as the property had been partitioned between the co-owners by way of oral family settlement. Defendant No.1 had constructed his house bearing No.364, J.P.Nagar, Jalandhar and he is in actual physical possession thereon being exclusive owner. Details of the acquisition proceedings initiated by the Improvement Trust, Jalandhar have been given, which were started by way of notice under Section 36 of the Punjab Town Improvement Act on 03.09.1974 and notification under Section 42 of the Punjab Town Improvement Trust issued on 20.07.1977. After the acquisition proceedings were carried out, amount of compensation was deposited by the Jalandhar Improvement Trust with the Tribunal vide revenue deposit receipt N.D. No.1148 dated 10.01.1981 and notice under Section 12 of the Land Acquisition Act was served upon the plaintiffs for receiving the compensation awarded. The land on which, defendant No.1 had made his

house was exempted by the Jalandhar Improvement Trust from acquisition as this land fell to the share of defendant No.1 and he was in possession thereon being exclusive owner. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for possession by way of partition as prayed for? OPP
- 1 (a) Whether the alleged co-owner who has relinquished their right in favour of plaintiff, had any ownership right in the suit property ? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP
3. Whether suit of the plaintiff is maintainable? OPP
4. Whether plaintiff has locus standi to file the present suit? OPP
5. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts below have decided all the issues against the plaintiffs by returning a concurrent finding of fact. Defendants had proved copy of judgment and decree dated 24.01.2008 passed by Sh. K.C. Gupta, the then Additional District Judge, Jalandhar as Ex.D2/A. While passing the said judgment, it was held as under:-

“20. There is an admission on the part of the plaintiff/appellant regarding acquisition of his share by the improvement trust, then he filed suit for mandatory injunction directing the improvement trust to allot being local displaced person, one plot measuring 1 Kanal out of the scheme. In that suit, it has been pleaded by the plaintiff that he had one fourth share in Khasra No.133, which has been acquired by the improvement trust and he has become local displaced person on account

of acquisition of land and is entitled to exemption/allotment of 1 Kanal plot. He has reiterated this version when he appeared in the witness box as PW-1 that his $\frac{1}{4}$ share has been acquired by the Improvement Trust. His suit by the learned Sub Judge, Ist Class, was dismissed on 13.03.1992 and copy of the judgment has been placed on the file as Ex.D12/A and Ex.D12/B is the decree sheet. The plaintiff/appellant preferred appeal against that judgment and decree in the learned Appellate Court, but the same was dismissed as withdrawn with liberty to file suit for challenging notification vide which $\frac{1}{4}$ th share of Amar Nath was exempted. The certified copy of the Judgment regarding dismissal of the appeal has been placed on the record as Ex.P22. As per the application filed by the applicant/appellant before the learned Appellate Court, he has alleged that he wanted to challenge the notification dated 22.01.1993 vide which share of Amar Nath measuring 3 Kanals 13 Marlas was exempted during pendency of the appeal and his application was allowed and appeal was dismissed as withdrawn. The argument of the learned counsel for the plaintiff/appellant that after withdrawal of the appeal by the plaintiff/appellant, judgment and decree Ex.D12/A and Ex.D12/B became meaningless has no force because in that litigation, there is admission of the plaintiff/appellant regarding acquisition of his share which is the best evidence to prove that he is not owner in possession of the land measuring 3 Kanals 13 Marlas.

As regards copies of jamabandies and khasra girdawaries showing the name of the plaintiff/appellant in the ownership column are concerned, it is settled law that entries in the copies of jamabandi are rebuttable which have been rebutted by the defendants/respondents by leading cogent and convincing evidence as well as by the admission of the plaintiff/appellant himself and the revenue record is not conclusive proof of ownership.

By filing a suit for mandatory injunction for allotment of 1 Kanal plot on the basis of Local Displaced Persons, there is again admission on his part that his share has been acquired by the Improvement Trust. It is only suit for permanent injunction in which possession of the plaintiff/appellant is only to be seen which he has failed to prove and as per notification dated 21/22.01.1993 area which was exempted from acquisition measuring 3 Kanals 13 Marlas belongs to Amar Nath, another co-sharer where he has raised construction of the house. The learned lower court has rightly come to the conclusion that plaintiff is not in possession of the land measuring 3 Kanals 13 Marlas and is not entitled to the injunction prayed for and the plaintiff-appellant

is estopped from filing the suit for permanent injunction in view of the earlier litigation between them.”

The above said judgment makes it abundantly clear that the plaintiffs were never in possession of 03 Kanals 13 Marlas of land and this land was exempted from acquisition proceedings on an application made by defendant No.1. Since possession of the plaintiff was not proved, his suit for permanent injunction was dismissed. Moreover, the plaintiff had himself admitted regarding acquisition of his share and that he was not the owner in possession of land measuring 03 Kanals 13 Marlas. The plaintiff(s) had filed a suit for mandatory injunction for allotment of plot measuring 01 Kanal for being a Local Displaced Person. Even in this suit, he has admitted that his share has been acquired by the improvement trust. In the earlier filed suit, plaintiff had admitted that exemption letter was issued in the name of Amar Nath and no objection was made by him before the Improvement Trust, Jalandhar regarding issuance of that letter. Even the electricity connection(s) are in the name of Amar Nath since 1966 and no objection was raised by the plaintiffs in that regard.

After hearing learned counsel for the appellant and going through the impugned judgments, this Court is of the view that plaintiff-appellants have failed to lead any cogent and convincing evidence to prove that they are owner in possession over the suit property. In the absence of any such evidence, suit of plaintiff-appellants has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this

appeal.

Dismissed.

22.10.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No