

In the High Court of Punjab and Haryana at Chandigarh

**RSA-2123-1987 (O&M) and
XOBS-21-C-1989
Date of Decision: March 01, 2019**

Gobind Saran Singh and others

... Appellants

Versus

Raj Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep K. Sharma, Advocate,
for appellants no. 6 to 10.

None for appellants no. 1 to 5.

None for the respondents/Cross objectors.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the concurrent finding of fact whereby suit of the respondent-plaintiff for possession had been decreed by the trial Court and appeal preferred by the appellants-defendants has been dismissed by the Lower Appellate Court.

Plaintiff – Smt. Raj Kaur instituted a suit for possession of land measuring 143 sq. yards – length: 29'-7” and width 43'-6”, North : Private passage 12' wide, South: Shivala Bhagat Ram, East: property belonging to the plaintiff and private lane of the plaintiff, West: property of Gobind Singh Sant Parkash being part of khasra nos. 508-510/3 situated at Kucha Sunder Singh, Karkhana Bazar, Amritsar with mandatory injunction directing defendants no. 1 to 10 to remove buildings and structure after

demolishing the same. It was alleged that Puran Singh, husband of the plaintiff, died in the year 1959. It was further alleged that one Bawa Sunder Singh had two sons, namely, Makhan Singh and Jawala Singh. Makhan Singh had two sons i.e. Jagat Singh (defendant no.16) and Mohinder Singh (defendant No. 17), whereas Jawala Singh had one son, namely, Puran Singh. Said Puran Singh had one widow, namely, Raj Kaur (plaintiff), one son and four daughters. Puran Singh sold one piece of land having well and 4 kothries total measuring 1253 sq. yards, a part of property bearing Khana Shumari No. 508-510/3 as per registered sale deed dated 16.02.1932 to Alla Singh, father of defendants no. 1 to 5. The property was part of the property which Bawa Sunder Singh purchased i.e. one house, pucca-kucha built including wood, sand, trees, open land, garden, shops etc. along with one chobara, tavela, another chobara and tavela pucca built, stair case, bearing no. 303 to 310 situated in Bazar Karkhana, Katra Jallianwala, Amritsar which he purchased vide sale deed dated 08.06.1883. One-half of property purchased by Bawa Sunder Singh was in possession of Puran Singh at the time of sale in favour of Alla Singh and the remaining property in possession of Puran Singh and on his demise its possession came with the plaintiff till 1978 when she was illegally dispossessed in July 1978. It was further alleged that defendants no.1 to 5 forcibly and illegally dispossessed the plaintiff of land 143 square yards of land shown red in the plan attached with the plaint. This land is part of property which Bawa Sunder Singh as per sale deed dated 08.06.1983 purchased. Defendants no. 6 to 10 claim to be transferees from defendants no. 1 to 5. In such manner, the sale deeds were challenged. Defendants no. 16 and 17 were impleaded as they were the

relatives of one of the branch.

Defendants no.1 to 5 opposed the suit and filed a joint written statement by taking various preliminary objections qua maintainability, limitation, applicability provisions of Order 2 Rule 2 CPC as the previous suit instituted by the plaintiff was already dismissed vide order dated 27.01.1981. The sale by Puran Singh to Alla Singh was admitted and the alleged dispossession was emphatically denied. It was clarified that one Hira Shah along with other land of Alla Singh had taken illegal possession and a decree for possession was obtained by defendants no. 1 to 5. Defendants raised constructions, but the plaintiff did not raise any objection, the sale deeds executed in favour of appellants/defendants no. 6 to 10 was genuine in accordance with law.

Defendants no. 6 to 10 filed separate written statement claimed to be bona fide purchasers.

Replication to the written statement filed by defendants no. 6 to 10 was filed. Contents of the written statement were denied and allegations of the plaint were reiterated.

The trial Court, on the pleadings of the parties, framed the following issues:-

- “1. Whether the suit is properly valued for the purposes of court fees and jurisdiction? OPP*
- 2. Whether the suit is bad for mis-joinder of parties and cause of action? OPD*
- 3. Whether the suit is barred under order 2 Rule 2 CPC? OPD*
- 4. Whether the plaintiff has no locus standi to file this suit? OPD*

5. *Whether the suit is within limitation? OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD*
7. *Whether the plaintiff and defendant no.11 to 15 are owners of the property in suit? OPD*
8. *Whether defendants no. 6 to 10 are bona fide purchasers of the property in suit in good faith and for consideration and without notice to the rights of the plaintiffs and are protected u/s 41 of the T.P. Act? OPD*
9. *Whether Ala Singh validly sold away the property in suit in favour of defendants no. 1 to 5? OPD*
10. *If issue no.9 is not proved, whether the sale of property in suit in favour of defendants no. 6 to 10 is void and illegal? OPP*
11. *Whether the plaintiff is forcibly and illegally dispossessed from the property in suit? OPP*
12. *Relief.”*

The plaintiff in support of her pleadings examined PW1 – Parman Singh, Head Registration Clerk, Registrar Office, who brought the sale deed dated 01.07.1932 (Ex.P1), PW2 – S.C. Virmani, Civil Engineer, who prepared the site plan at the spot, PW3 – Gokal Chand, a resident of the area and also cousin of the plaintiff, PW 4 – Surjit Singh, relative of the plaintiff and Raj Kaur, herself as PW5. Defendants examined DW1 – Khushi Ram, Advocate, attesting witness of sale deed dated 02.01.1979, DW2 – P.C.Khosla, Pleader District Courts, who represented the sale deed, DW3 – Akshey Kumar, Deed Writer, DW4 – Inder Pal, Bailiff, District Courts, Amritsar, DW5 – Suresh Kumar, Deed Writer, DW-6 Roop Lal, DW7 – Bawa Ram and DW8 – Gurdip Singh.

The trial Court, on noticing the evidence on record, as well as,

Order 2 Rule 2, decreed the suit, but the appeal preferred by the defendants before the Lower Appellate Court has been dismissed.

Mr. Sandeep K. Sharma, learned counsel, appearing on behalf of appellant nos. 6 to 10, who are contesting defendants, submitted that plaintiff miserably failed to prove the alleged possession of 143 sq. yards, much less, the title of the suit as no demarcation report was conducted. PW2 – S.C. Virmani, Civil Engineer had only prepared the site plan. In the absence of demarcation report, alleged dispossession of land measuring 143 square yards at the hands of defendants remained unproved. Raj Kaur-plaintiff in the year 1979 i.e. January 1979 filed the suit for declaration of having become owner in possession of the suit property as per the site plan measuring 1396 square yards comprising of the well, trees, 4 (four) rooms, situated at Katra Jallianwala, Bazar Karkhana, Amritsar to the extent of $\frac{1}{4}$ share in the area measuring 1253 share yards and full ownership of 143 square yards. In the afore-mentioned suit, she appeared as PW1 and stated the land sold to Alla Singh lay on the other side of the well and the other portion of the side of the well was with her. There was a passage adjoining to the plot. In her cross – examination, she further stated that road on one side was about six feet wide and on other side 12 feet. There was a passage of about five feet wide in between her house and the plot sold to Alla Singh, which measured 144 square yards. The trial Court noticing the evidence, held that defendant miserably failed to discharge the onus with regard to title of various land owned by Puran Singh. In the previous suit filed on 07.06.1979, cause of action for possession had not arisen. Moreover the previous suit was not decided on merits and, therefore, the present suit was

not held to be barred by provisions of Order 2 Rule 2 of the CPC.

Cross-objections bearing No. 21-C of 1989 have also been filed on behalf of the Raj Kaur – Plaintiff for grant of mense profit. There is no representation despite being represented through counsel as indicated in various orders dated 02.04.2014, 01.05.2014, 28.05.2014, 01.10.2014, 03.12.2014, 10.12.2014, 08.07.2016, 21.10.2016 and 14.02.2017 and even on the last date i.e. 25.01.2019 there was no representation.

Appeal is of the year 1987, accordingly, I proceed to decide the same on merits.

I have heard learned counsel for appellants no. 6 to 10 and perused the paper-book , records of the Courts below and of the view that following substantial questions of law arise for determination:-

1. Whether the respondent no.1-plaintiff was able to prove the alleged dispossession of an area or identification of the property bearing specific khasra numbers in the absence of the revenue record?
2. Whether the judgments and decrees suffer from illegality or ?

The genesis of the judgments of both the courts below is basically based upon the site plan Ex.P2 prepared by Sh. S.C. Virmani, Civil Engineer, according to him excess area was 1253 sq. yards. Plain and simple reading of the cross examination of Sh. S.C. Virmani, reveals that he had no order under which circumstances he had measured the area, there was no order of the Court authorising him to inspect the area and measure the land in dispute, but told by Raj Kaur. He conducted inspection on 31.03.1979, whereas suit was filed in the year 1981. He prepared the rough notes on the

spot, but he did not obtain signatures of Gobind Saran Singh-defendant no.1 nor called upon him to sign the same. Relevant portion of the cross examination of S.C. Virmani is as under:-

“I had prepared rough notes on the spot. I did not obtain signatures of Gobind Saran Singh nor I called upon him to sign the same. I had prepared the site plan on the basis of rough notes after four or five days in my office. I have not preserved rough notes Ex.P2 site plan is more or less is the copy of earlier site plan. I also went to the spot again before preparing the site plan Ex.P2. I have not seen the original site plan today, but that is lying at my house.....”

To a further question posed in cross-examination, he stated that he had not seen the boundaries of the sale deed, but had seen the area. He did not tally the boundaries of sale deed with the actual boundaries on the spot, nor did know that Puran Singh sold 1253 sq. yards of land beyond the portion towards its western site. The relevant portion of such cross-examination reads as under:-

“I had not seen the boundaries in the sale deed, but had seen the area. I did not tally the boundaries of sale deed with the actual boundary on the spot. I do not know that if Pooran Singh had sold 1253 sq. yds of land from beyond the portion towards its western side.....”

The other witnesses did not seen the original sale deeds and they were not experts to prove the dispossession. Plaintiff did not place on record any documentary evidence i.e. revenue record to establish that how much area, she had acquired as owner on the demise of Puran Singh as the previous suit Ex.D2 vide order dated 27.01.1981 was dismissed as

withdrawn. As per the averments, in the plaint, the previous suit was of the year 1979, whereas possession allegedly taken by the defendants was in July, 1978. The provisions of Order 2 Rule 2 CPC enables the opposite party to take the objections of abandonment of the claim or relief. Order 2 Rule 2 CPC reads as under:-

“2. Suit to include the whole claim – (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim – Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs – A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation – For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

In the previous suit, the plaintiff did not claim the declaration of land measuring 143 sq. yards. In the absence of any declaration simpliciter suit for possession in the absence of title is not maintainable.

Para no.10 of the previous suit reads as under:-

“10. In the circumstances mentioned above and for the reasons specified above it is prayed that a decree for a declaration to the effect that the plaintiff is owner in possession of the property fully mentioned and described in para 3 of the plaint as per copy of the site plan attached bearing old khanashamari Nos. 510-508 measuring 1396 sq. yds. Comprising a well, trees 4 rooms and vacant land situated at Katra Jalwalian Sultanwind Gate Amritsar to the extent of 1/4th share in the area of 1253 sq.yds. and full owner of 143 sq. yds as detailed above, in it or in the alternative has got a charge over it of the unpaid sale price and as a consequential relief the defendants be restrained perpetually from making any unauthorised transfers and construction so as to dispossess the plaintiff from her share of the land in her possession through her licencees Nanak Chand, Rup Lal and Smt. Asha Rani be passed in favour of the plaintiff and against the defendants with costs. Such other relief to which the plaintiff be found entitled to in law and equity be also granted in the interest of justice and equity and fair play.

Verification

Verified at Amritsar on 7.6.79 that the paras 1 to 8 of the plaint are true to my best of knowledge and 9 and 10 are true on the basis of information supplied and believed as correct.

Sd/- Raj Kaur

*Raj Kaur wd/o S. Puran Singh
Sodhi by caste R/O H.No. 1568,
Tirath Shah Road, Sultanwind
Gate, Amritsar.*

Through counsel

Sd/- xxx Adv. 7.6.79.”

Both the courts below relied upon the evidence of the

defendants but eschewed from not noticing the fact that plaintiff miserably failed to discharge the onus. The best possible evidence was the title and the demarcation report to establish that defendants were in possession of excess area than the one sold vide sale deed measuring 1253 sq. yards. Sale deed is not in dispute. In such situation, sale deed by defendants no.1 to 5 in favour of the defendant nos. 6 to 10 can not be held illegal, null and void. In other words, the plaintiff miserably failed to prove the categorical case once the onus remain undischarged, the same was not required to be rebutted.

In view of what has been observed, judgments and decrees of both the Courts below, are not sustainable in the eyes of law. The Substantial Questions Of Law, framed above, are answered in favour of the appellants-defendants and against the respondent-plaintiff. The judgments and decrees of both the courts below are set aside. Suit of the plaintiff is dismissed. Resultantly, the appeal stands allowed. Consequently, the cross-objections are dismissed.

March 01, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No