

**RSA No.1553 of 1989 (O&M) AND
COCP Nos.1413 of 2005 and 524 of 2006 (O&M)**

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

Date of decision : 26.02.2019

1.

RSA No.1553 of 1989 (O&M)

Chand Ram (deceased) through LR's and others

... Appellants

Versus

Nand Ram and others

... Respondents

2.

COCP-1413-2005 (O&M)

Ran Singh

... Petitioner

Versus

Partap and others

... Respondents

3.

COCP-524-2006 (O&M)

Sube Singh

... Petitioner

Versus

Raghubir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amar Vivek, Advocate and
Mr. Abhay Gupta, Advocate
for the appellant.

Mr. Vikram Punia, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

CM-2634-C-2019

For the reasons stated in the application, which is supported by

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an affidavit, the legal heirs of respondent Nos.1 and 2 are ordered to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of one regular second appeal and two contempt petitions, aforementioned.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiff for permanent injunction, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that the plaintiffs were non-proprietors and resident and inhabitants of Panna Panchan of Village Pipli, Tehsil and District Sonipat. The defendants obtained a collusive decree in a suit No.148 of 1957. Preliminary and final decree, in the aforesaid suit, were passed on 23.06.1958 and 18.10.1960, respectively and prepared aks sajra map favourable to them. On the basis of the aforementioned decree, obtained the allotment of the old houses and old *gitwaras*, in fact, the plaintiffs were owners in possession of the land for so many years and generations. Descriptions of the same was given in para 2 of the plaint. Since there was apprehension, at the instance of the defendants qua forcible dispossession, filed the suit.

The defendants opposed the suit and denied the plaintiffs to be in possession of the suit property. It was alleged that since they were proprietors, were, within their right to get the shamlat land partitioned. After final decree, all the defendants had taken the possession of the plots allotted to them through agency of the courts. The suit was stated to be not

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maintainable as the plaintiffs were not in possession and barred by law of limitation.

Since the parties were at variance, the trial Court framed the following issue:-

1. *Whether the plaintiffs are the owners and in possession of the property in dispute? OPP*
2. *Whether the preliminary and final decree passed on 23.06.1958 and 18.10.1960, respectively in Civil Suit No.148 of 1957 are collusive and are not binding on the plaintiff? OPP*
3. *Whether Harbhaj Singh defendant was not a party to the suit, in which, decree dated 18.10.60 was passed, if so, to what effect? OPP*
4. *Whether the suit is not within time? OPD*
5. *Whether the plaintiffs have no locus standi to file this suit? OPD*
6. *Whether the suit is bad for mis-joinder of parties and causes for action? OPD*
7. *Relief.*

Both the parties led evidence in support of their respective cases.

The trial Court treated the issue No.3 as preliminary and dismissed the suit. So did the lower Appellate Court.

Mr. Amar Vivek, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the Courts below did not appreciate the law as right to sue always survives. The suit for injunction was maintainable against surviving defendants, in case, one of the beneficiaries of the representative decree, died. The plaintiffs have placed sufficient material before the Courts below to establish their long and settled possession, thus,

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urges this Court for setting aside the concurrent findings of fact as there is gross illegality and perversity.

Mr. Punia, learned counsel appearing on behalf of the respondents-defendants submitted that suit for injunction was not maintainable as the plaintiffs did not amend the suit for mandatory injunction, despite the fact that they had examined five witnesses. Ex.D1 is the certified copy of the warrant of possession, whereby the possession was taken and Ex.D2 is the report, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that there is no merit and force in the submissions of Mr. Amar Vivek. The plaintiffs, in support of the pleadings, examined Chand Ram as PW1, one of the co-plaintiff, who deposed that deceased Harbhaj Singh was not the party to the earlier suit. PW3 Rizak Ram, Siri Chand PW4 and Kundan Lal PW5 expressed the ignorance regarding deceased Harbhaj Singh to be the real owner. Be that as it may, the fact of the matter is that in a simpliciter suit for injunction, the plaintiffs were required to establish their long and settled possession. Their own admission is reflected from the averments in COCP No.1413 of 2005, whereby they alleged to have been dispossessed, owing to the violation of the interim order dated 16.06.1974. As per Ex.D1, warrant of possession, in the previous suit was dated 09.09.1974 and the possession of the suit property was taken. Rapat, in this regard, is Ex.D2. The plaintiffs did not amend the suit to claim the mandatory injunction. It was a simpliciter suit for injunction and not for declaration, therefore, would be a

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farcical exercise in remitting the matter to the trial Court for adjudication on other issues, in view of the fact, much time has elapsed. No evidence *prime facie* was attached qua long and settled possession, so that, the Courts below could have protected their possession by granting the injunction qua dispossession except in due course of law. There was no challenge to the decree, in the absence of relief of declaration.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

As regards the contempt petitions, since the main appeal is dismissed, no cause of action survives in the contempt petitions, accordingly, the same have been rendered infructuous and are disposed of as such.

26.02.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**