

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:4.9.2019

RSA No. 2855 of 1995 (O&M)

Hari Ram (since deceased) through Lrs and others

---Appellants

vs.

Ran Singh and others

---Respondents

RSA No. 2856 of 1995 (O&M)

Hari Ram (since deceased) through Lrs and others

---Appellants

vs.

Ran Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mohinder Singh Joshi, Advocate
for the appellants in both the appeals

Mr. Bhavnik Mehta, Advocate
for the respondents

Rekha Mittal, J.

This order will dispose of RSA Nos. 2855 and 2856 of 1995 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 2855 of 1995.

The appellants-plaintiffs filed the suit for permanent injunction restraining the defendants from interfering in their peaceful possession over land measuring more than 111 kanals, detailed in head note of the plaint, except in due course of law. Suit filed by the plaintiffs was partly decreed and defendants-respondents were restrained from interfering in

possession of the plaintiffs over land bearing khasra Nos. 1248 (0-10) and 1249(2-9). The judgment and decree passed by the trial court resulted in filing of two appeals, one by the plaintiffs and other by the defendants. Both the appeals were decided by the Additional District Judge, Hoshiarpur vide judgment and decree dated 4.8.1995. Appeal preferred by the appellants-plaintiffs was dismissed but appeal filed by respondents-defendants was allowed. Eventually, suit filed by the appellants-plaintiffs for grant of permanent injunction was dismissed in toto, leaving the parties to bear their own costs.

Counsel for the appellants would argue that he confines his prayer for affirmation of the judgment and decree passed by the trial court whereby permanent injunction was granted in respect of land comprising the aforesaid khasra numbers. It is argued that the First Appellate Court grossly erred by holding that the present suit is barred under Order 9 Rule 9 and 23 Rule 1 of the Civil Procedure Code (in short “the Code”). It is argued that previously the appellants filed a suit for declaration and injunction in respect of the suit land and the same was dismissed under Order 9 Rule 8 of the Code. The appellants filed an application for restoration of the suit. It is further argued that since the appellants-plaintiffs apprehended immediate threat of their dispossession from the suit land, there accrued a fresh cause of action to institute suit for injunction and as such the provisions of Order 9 Rule 9 or 23 Rule 1 of the Code are not attracted, thus, have wrongly been applied by the Court in Appeal.

Counsel representing the respondents, on the contrary, has supported the judgment and decree passed by the First Appellate Court with

the submission that the appellants earlier filed suit for declaration and permanent injunction in respect of the suit land and since there was no fresh cause of action accrued to the appellants-plaintiffs to file the instant suit for injunction, the Appellate Court has rightly held that present suit is barred under Order 9 Rule 9 and 23 Rule 1 of the Code.

I have heard counsel for the parties, perused the paper books and records.

Indisputably, the appellants-plaintiffs earlier filed suit for declaration and permanent injunction in respect of suit land and in the said suit, interim injunction was allowed directing the parties to maintain status quo with regard to possession of suit land. The said suit was dismissed in default under Order 9 Rule 8 of the Code on 19.12.85. The present suit for permanent injunction was filed on 18.5.1989 after about four years of dismissal of earlier suit. Counsel for the appellants after going through contents of plaint of the instant suit would fairly concede that nothing has been mentioned therein with regard to status of the earlier suit or a fresh cause of action having accrued to the appellants-plaintiffs subsequent to dismissal of earlier suit for declaration and permanent injunction.

Perusal of averments in paras No. 3 and 4 of the plaint reveals that as per case set up by the appellants, defendants attempted to take forcible possession to which they have no right at all. The defendants have been asked time and again not to take forcible possession but they are adamant to take possession of the suit land forcibly to which they have no right at all. Nothing has been averred as to when and how cause of action accrued to file the instant suit much less to prove that a fresh cause of

action has accrued to the appellants to file a suit for permanent injunction subsequent to dismissal of the earlier suit for permanent injunction in which application for interim injunction was allowed by directing the parties to maintain status quo. In absence of appellants-plaintiffs averring a fresh cause of action having accrued to them subsequent to dismissal of earlier suit, the Court in Appeal has rightly held that the present suit is barred under Order 9 Rule 9 of the Code that says “where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”. In the given scenario, I do not find an error much less perversity in the judgment and decree passed by the First Appellate Court.

In view of what has been discussed hereinbefore, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

4.9.2019
paramjit

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