

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

(1)

**CM No.9551-CII of 2019 in/and
SAO No. 15 of 2004 (O&M)
Date of Decision: May 13, 2019.**

Hans Raj (deceased) through his legal heirs

.....APPELLANT(s).

VERSUS

Karan Singh and another

.....RESPONDENT(s).

(2)

SAO No. 16 of 2004 (O&M)

Hans Raj (deceased) through his legal heirs

.....APPELLANT(s).

VERSUS

Jagdish and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Jain, Advocate
for the appellant (s) in both the appeals.

Mr. Lokesh Sinhal, Advocate
for the respondents.

SURINDER GUPTA, J.

The above referred appeals have been taken up together for disposal by common order as the counsel for the parties have submitted that the facts and order of the Appellate Court in both the appeals are similar.

For the sake of convenience, facts have been taken from appeal titled as “*Hans Raj (deceased) through his legal heirs Vs. Karan Singh and others*” bearing SAO No.15 of 2004.

Plaintiff Karan Singh filed suit seeking the relief of declaration as follows:-

“Suit for declaration with consequential relief of Permanent Injunction. That the plaintiff is owner of land bearing Khewat No.94 Khata No.102, rec t. No.11, killa No.3/2 measuring 2 Kanal 3 Marlas situated within revenue estate of village Khirbi, Tehsil Palwal, Distt. Faridabad.”

Learned lower court framed following issues to decide the dispute between the parties:-

- (1) Whether the plaintiff is owner in possession of the suit land? OPP
- (2) Whether the suit land was given by the predecessor-in-interest of the plaintiff to Bhagirath for cultivation in lieu of services as alleged? OPP
- (3) Whether the suit land reverted to the plaintiff after ceasing of rendering of service after the death of Bhagirath and his successor-in-interest and the plaintiff has come in possession of the suit land, as alleged? OPP
- (4) If the plaintiff is not found in possession, then whether the plaintiff is entitled to recover possession? OPP
- (5) Whether the plaintiff has no locus-standi to file the suit? OPD
- (6) Whether the suit is not maintainable? OPD
- (7) Whether the plaintiff is estopped by his act and conduct from filing the suit? OPD
- (8) Whether the plaintiff has no cause of action to file the suit? OPD
- (9) Whether the suit is collusive between the plaintiff and defendant No.2? OPD
- (10) Relief.

While recording findings on issues No.1 to 3, learned lower

Court observed that plaintiff is owner of the suit land but he is not in possession of the same. Issues No.5, 7 to 9 were not pressed, as such, the findings on these issues were recorded against the defendants. While recording findings on issues No.4 and 6, it was observed that the suit is not maintainable and plaintiff being out of possession, is not entitled to seek the relief as prayed for.

Plaintiff filed appeal before the District Judge, Faridabad, wherein the findings on issues No.1 to 3, 5, 7 to 9 as recorded by the lower Court were affirmed. Learned first Appellate Court reversed the finding of the trial Court on issues No.4 and 6 with the observations as follows:-

“22. Faced with this situation, learned counsel for plaintiff has argued that even if the suit was not in proper form, the same should not have been dismissed. Rather the plaintiff should have been given opportunity to amend plaint to bring it in proper form. To support this contention reliance has been placed upon **Jit Singh alias Ranjit Singh Vs. Baboo Singh 1997(3) Latest Judicial Reports 392; D.A.V. College Hoshiarpur Society Vs. SarvadaNand Anglo Sanskrit Higher Secondary School, Managing Committee A.I.R. 1967 Punjab 501 and; Mst. Rukhmabai Vs. Laxmi Narayan, A.I.R. 1960 S.C. 335.**

23. I have read the above pronouncements minutely. In *Jit Singh Vs. Baboo Singh (Supra)*, the plaintiff filed suit for permanent injunction restraining the defendant from encroaching upon the land owned and possessed by them. The defendant, on the other hand, asserted that he was the owner in possession of the land. The first appellate court came to the conclusion that neither of the parties had been able to establish title over the suit land. As regards possession, it came to the conclusion that the plaintiff was in possession but, had been dispossessed three months

prior to (sic or) even less than that from the filing of the suit. However the suit of plaintiff was decreed. The defendants challenged the judgment on the ground, inter-alia, that no injunction could be granted by the court as the relief of possession was not claimed and hence the appeal ought to have been dismissed. The Hon'ble High Court held that the relief sought by the plaintiff was not permissible in law, however, in the context of that, learned lower court ought to have asked the plaintiff to amend the plaint thereby seeking a relief of possession as an alternative plea. Resultantly, the appeal was accepted and the case was remanded to the lower court for fresh adjudication after allowing the plaintiff to amend the plaint.

24. In *D.A.V. College Hoshiarpur Society's case* the plaintiff society filed a suit for declaration that it was the owner and in possession of the management of a school and that the defendant committee has nothing to do with it and, by way of consequential relief prayed for an injunction restraining the defendant committee from interfering with the plaintiff's possession of management of the school. The court came to the conclusion that on the date of suit the plaintiff-society was neither in possession of the school building nor in control of the management thereof. Resultantly, the suit was dismissed on the ground that the plaintiff-society had not asked for possession of the management of the school. While not differing with the lower appellant court, the Hon'ble High Court held that instead of dismissing the suit straightway the lower appellate court should have remanded it to the trial court with direction to allow the plaintiff society to amend the plaint in order to remove the defects.

25. In *Mst. Rukhmabai Vs. Laxmi Narayan (Supra)*, the Hon'ble Apex Court held that on failure of the plaintiff to

ask for further relief, though he was in a position, it was well settled rule of practice not to dismiss the suit automatically but, to allow the plaintiff to make necessary amendments if he sought to do so.

26. To my mind, the law laid down in ***Jeet Singh Vs. Baboo Singh: D.A.V. College Hoshiarpur Society Vs. Sarvada Nand Anglo and Mst. Rukhmabai Vs. Laxmi Narayan case (supra)*** has to be followed. The courts are meant to do justice and not to throttle on otherwise genuine case on mere technicalities. Majesty of law lies in magnanimity. The defendant has been found to be in unauthorized possession of the land. Plaintiff is the owner. Dismissal of the suit by resorting to the technicalities of Section 34 of the Specific Relief Act would mean that the plaintiff, despite being the owner of the land, would not be in possession to file suit for possession against unauthorized occupant. In all probability the second suit would be hit by order 2 Rule 2 C.P.C.. In a way, that would amount to divesting the plaintiff of his right, title and interest in the suit land. This was never the object or intent of law. No doubt, the plaintiff committed a mistake in not claiming the relief of possession but, dismissal of the suit on that score would be too harsh a penalty. Counsel for the plaintiff has been asked if he is prepared to amend the plaint so as to claim the relief of possession in the alternative. His answer being in affirmative, the findings of learned lower court on issue No.4 and 6 are reversed.”

With above observation, the case was remanded to the lower Court with direction to allow the plaintiff permission to amend the plaint to claim the alternate relief of possession and then to proceed in accordance with law.

Learned counsel for the appellant has argued that the

defendant-appellant had taken plea regarding his possession over the suit property in the written statement. Despite knowledge of pleadings of appellant-defendant, plaintiff did not opt to seek the relief of possession over the suit property and the first Appellate Court has committed grave error while allowing this right to the plaintiff and remanding the case.

Learned first Appellate Court has discussed the law and citations while concluding that “Courts are meant to do justice and not to throttle an otherwise genuine case on mere technicalities. Majesty of law lies in magnanimity”. It committed no error while observing that instead of dismissing the suit, the trial Court was duty bound to allow an opportunity to the plaintiff to amend the plaint to seek relief of possession of the suit property. The observations as recorded by the first Appellate Court call for no interference in these appeals, which has no merits and are dismissed.

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The appellant has sought permission to place on file certified copies of Annexures E to G by way of additional evidence. In this appeal, the dispute between the parties is not to be decided on merits, as such, this application is disposed of with liberty to the appellant to move the same before the lower court. On filing of such application, lower Court will decide the same in accordance with law.

May 13, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***