

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

RSA No.5015 of 2011(O&M)

Date of decision: 24.1.2019

Surjit Singh and others

.....Appellants

VERSUS

Rajinder Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Chetan Bansal, Advocate for appellants.

Mr. M.K. Dogra, Advocate for respondents No.1, 2 and 4.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 06.09.2011 passed by the Additional District Judge (Adhoc) Fast Track Court- I, Hoshiarpur whereby appeal preferred by respondents/plaintiffs against the judgment and decree dated 09.06.2010 passed by the trial Court was allowed, judgment and decree impugned were set aside and suit filed by the respondents/plaintiffs for grant of permanent injunction restraining the appellants/defendants from dispossessing the plaintiffs from suit land except in due course of law was allowed.

The respondents/plaintiffs filed suit for injunction against dispossession in respect of land measuring 63 kanal 4 marlas detailed in para 1 (un-numbered) of the judgment passed by the trial Court. It is averred that the respondents are owner in possession of suit land and their names have been duly reflected in the revenue records as such. They are

cultivating the suit land since long. The appellants/defendants are forcibly trying to interfere in their possession and threatening to dispossess them from suit property without any right, title or interest. The suit land was charand land that was converted into cultivable land by the respondents. The appellants are claiming their grazing rights over the suit property regarding which application of appellants under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (in short 'CPC') was dismissed as per order dated 16.11.1993. It is further averred that order of Consolidation Officer regarding change in kind of land does not have any effect on rights of the respondents/plaintiffs.

The appellants/defendants filed the written statement raising preliminary objections inter alia that the respondents are guilty of concealment of material facts; suit is not maintainable; there is no cause of action to file the suit; respondents were estopped from filing the suit and the suit being barred by limitation. They have denied the respondents to be owners or in possession of suit property with the averments that land in dispute along with other land was kept for the purpose of grazing ground for cattle in village as suit land was *gair mumkin* pasture before the consolidation. The appellants and other inhabitants of the village filed application for rectification of mistake in revenue record regarding land left during consolidation and same has been ordered to be rectified by the Consolidation Department. Aggrieved by order of Consolidation Authorities, the plaintiff and his brother filed Civil Writ Petition No.4428 of 2002 in High Court which was dismissed on 12.08.2003. The application for review of order dated 12.08.2003 was dismissed on 31.10.2003. It is averred that respondents have filed false and frivolous

suit with ulterior motive to deprive the appellants of their legal right in the suit land.

The controversy between the parties led to framing of issues reproduced in para 4 of the judgment of trial Court. The parties were permitted to adduce evidence in support of their respective contentions. The trial Court answered issue No.1 and 2 against respondents/plaintiffs and eventually suit filed by the respondents/plaintiffs was ordered to be dismissed with costs. As has been noticed hereinbefore, the appeal preferred by the respondents/plaintiffs was allowed by reversing the decree and judgment passed by the trial Court.

Counsel for the appellants would argue that the respondents filed suit for permanent injunction against dispossession by concealing material facts from the Court in respect of earlier litigation between predecessors in interest of parties way back in the year 1921. Another civil suit was decided in the year 1976 and the writ petition filed was decided by the High Court in the year 2003. It is vehemently argued that the trial Court, on due consideration of materials on record reflecting on conduct of the respondents/plaintiffs who had concealed the decision in the earlier litigation, has rightly answered issue No.2 against them but the Appellate Court seriously erred by allowing the discretionary relief of injunction in favour of the respondents without taking a serious view of concealment of material facts as well as non-compliance of provision of Order 7 Rule 1 (j) incorporated in the Code of Civil Procedure, 1908 by way of amendment made in March 1991 by the High Court, applicable to the States of Punjab and Haryana. It is further argued that even the Civil Writ Petition No.4428 of 2002 was dismissed by the High Court by taking

an adverse view against the respondents that they had approached the Court by concealment of material facts in respect of judgment dated 24.01.1921, judgment and decree dated 14.11.1979 and dated 29.05.1976. It is vehemently argued that as the respondents intentionally concealed the factum of previous litigation between the parties and decisions rendered in those cases with a clear intent to get ex parte injunction, allowed by the trial Court, their claim for grant of injunction is liable to be dismissed on this score alone. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114.** Further reference has been made to judgments of this Court **Subhash Vs. Ram Avtar, 2014 (36) RCR (Civil) 922** and **Mangal Ram Vs. Satish Chand and others, (2015) 180 PLR 714,** and judgment of Delhi High Court **Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority, (1999) 123 PLR 60**

Counsel representing the respondents/plaintiffs has supported the judgment passed by the Appellate Court with the submission that as the respondents/plaintiffs are found to be in possession of suit land on the basis of entries made in jamabandi, khasra girdawari and order dated 16.11.1993 passed by the Sub Judge Ist Class, Dasuya in an application under Order XXI Rule 32 CPC titled **Rattan Chand etc. Vs. Harbilas etc.,** no error can be found in the judgment of first Appellate Court granting injunction against dispossession except in due course of law. However, he is not in a position to say something with regard to respondents having failed to disclose the previous litigation between the parties and decisions therein. He is also unable to justify failure of the respondents to comply with the provisions of Order 7 Rule 1 (j) of CPC.

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

There is no denial that predecessors of the parties were entangled in litigation in respect of land measuring 453 kanal 16 marlas including land in the suit which was decided against predecessor in interest of the plaintiffs way back in the year 1921 vide judgment and decree dated 24.01.1921 passed by the Munsif IInd Class, Dasuya. The application under Order XXI Rule 32 CPC filed at the behest of successful decree holders or their successors was the off-shoot of decree dated 24.01.1921 that attained finality between the parties to the litigation. In the year 1976, Rattan Chand and others filed a suit for permanent injunction against Harbilas and others in respect of land measuring 396 kanal 5 marlas including the suit land which was decided in favour of plaintiffs of the said suit vide judgment and decree dated 29.05.1976 and appeal preferred by Harbilas and others (defendants therein) was dismissed by the Additional District Judge, Hoshiarpur vide judgment and decree dated 14.11.1979. It is also not in dispute that the judgment and decree dated 29.05.1976 passed in civil suit No.142 attained finality between the parties. Harbilas, one of the plaintiffs in the instant suit was one of the defendants in the suit filed by Rattan Chand etc.

The Consolidation Authorities passed orders making alteration in the revenue record in respect of nature of land. Om Parkash and Rajinder Pal sons of Durga Dass filed Civil Writ Petition No.4428 of 2002 to challenge the orders passed by the Consolidation Authorities. In the said writ petition, there is a reference to application under Order XXI Rule 32 CPC for violation of the decree dated 24.01.1921 passed in civil

suit No.559 of 1920 and the same being dismissed vide order dated 19.11.1993. The High Court has taken note of the fact that the petitioners therein mentioned regarding order passed by the Civil Court dismissing application of some of the respondents therein moved under Order XXI Rule 32 CPC but they conveniently chose not to refer to judgments (Annexure R-1 to R-3). Further held that judgment dated 24.01.1921 (Annexure R-1) clearly indicates that land in dispute was kept for the purpose of grazing ground for the cattle of village. Similarly, it is apparent from the copy of judgment and decree-sheet dated 14.11.1979 (Annexure R-2 and R-3 respectively) that predecessor in interest of the respondents filed a suit against predecessor in interest of the petitioner with a prayer that the defendants in that suit be restrained from interfering in the rights of plaintiffs therein for grazing their cattle in the property in dispute. The suit was dismissed by the trial Court on 29.05.1976. Predecessor in interest of the petitioners went in appeal which was dismissed vide judgment and decree dated 14.11.1979. The Court also reproduced a relevant portion of the judgment dated 14.11.1979 and eventually dismissed the writ petition.

The very fact that respondents knocked at the door of the Court for getting equitable and discretionary relief of injunction by concealing the material facts with regard to previous litigation between the parties and its fate goes a long way to substantiate plea of the appellants that the respondents/plaintiffs did not approach the Court with clean hands. As the respondents filed the suit by concealing material facts, the same ipso facto constitute a ground to dismiss their suit for grant of permanent injunction.

Not only this, Punjab and Haryana High Court made amendment in Order 7 CPC and by way of amendment, sub-rule (j) in Order 7 Rule 1 was added w.e.f. 15.03.1991, reads thus:-

"After clause (i) of Order 7 Rule 1, insert –

“(j) A statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.”

Perusal of the plaint filed by the respondents reveals that in para 8, averment was made that there is no other civil suit pending in any other Court of law regarding the same subject matter in between the same parties. The plaint is signed by Rajinder Pal, Om Parkash, Surinder Kumar and Harbilas. Though the respondents/plaintiffs have averred that there is no civil suit pending in the Court at the time of institution of the suit but they have safely and deliberately avoided to disclose the previous litigation and result thereof. Even the trial Court while granting ex parte interim injunction vide order dated 02.04.2005 did not bother to examine that the respondents/plaintiffs have not complied with the requirements of clause (j) of Order 7 Rule 1. However, while disposing of the suit, the trial Court has rightly taken a serious view of failure of the respondents to conceal material facts with regard to previous litigation and their having approached the Court with unclean hands but the Appellate Court without giving due weightage to the aforesaid facts and observations made by this

Court while disposing of CWP No.4428 of 2002 vide order dated 12.08.2003 still proceeded to set aside the judgment and decree passed by the trial Court particularly its findings on issue No.2 i.e. “whether the plaintiff has not come to the Court with clean hands”. In this view of the matter, judgment and decree passed by the Appellate Court suffer from serious legal flaw, thus, perverse. Once the respondents have disentitled themselves to get any relief particularly equitable and discretionary, examining the merits of the case qua possession of suit land would be an exercise in futility at the cost of making the judgment lengthy.

In view of what has been discussed hereinbefore, the appeal is allowed. Judgment and decree dated 06.09.2011 passed by the Appellate Court is set aside. As a natural corollary, suit filed by the respondents/plaintiffs for grant of permanent injunction is dismissed with costs throughout.

JANUARY 24, 2019
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no