

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

RSA No. 4549 of 2012 (O&M)

Date of decision : August 30, 2019

Gian Chand

.....Appellant

Versus

Chaman Lal and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Gupta, Advocate for the appellant.

Mr. Nakul Sharma, Advocate for the respondents.

LISA GILL, J.

Appellant – defendant has filed this appeal challenging judgment and decree dated 07.09.2010 passed by the learned Civil Judge (Junior Division), Amloh as well as judgment and decree dated 11.05.2012 passed by the learned District Judge, Fatehgarh Sahib.

Brief facts necessary for the adjudication of the case are that the plaintiffs – respondents filed a suit for permanent injunction for restraining defendant (appellant) from interfering in the peaceful possession of the plaintiffs over property measuring 0K-7 Marla i.e. 99'-0" X 19'-23" comprised in Khewat No. 393, Khatauni No. 609, Rect. No. 15, Khasra No. 2/2/12 4(0-7) situated within the revenue estate of Bir Amloh, as per jamabandi for the year 2001-2002 and for restraining the defendant from raising any construction thereon or restraining the defendant from dispossessing the plaintiffs therefrom. Plaintiffs pleaded themselves to be the exclusive owners in possession of the suit property. Plaintiff No. 1 stated that he purchased the suit property through a registered sale deed dated 10.08.1982 (Ex.P1) and plaintiff No. 2 namely Ravinder Kumar, purchased the property vide sale deed dated 05.02.2003 (Ex.P3). It is stated

that the defendant's property was adjoining the plaintiffs' property and he wanted to encroach upon the plaintiffs' property in an illegal and forcible manner. Hence, the suit was filed.

Present appellant – defendant contested the suit. While taking various preliminary objections, it was denied that the defendant was in any manner trying to encroach upon the property in question in an illegal and forcible manner. Appellant - defendant claimed that property comprised in Khewat No. 45/83, Rect. 9 22 (8-0), 15/2/1(0-18) as per the Jamabandi for the year 2001-2002 situated in the revenue limits of Village Bir Amloh belonged to the appellant – defendant. The suit property was adjoining to the land mentioned in the head note of the plaint comprised in Khewat No. 393/609 Khatauni No. 15//2/2/12/4 (0-7). It is further stated that it is the plaintiffs, who intended and threatened to cause interference in the property of the defendant, who had to file a civil suit titled 'Gian Chand versus Chaman Lal and another' on 10.06.2005. The plaintiffs, who were the defendants in the said suit were restrained from interfering in the peaceful possession of the appellant – defendant over the suit property. The fact of passing of order dated 19.07.2005 in the said suit is claimed to have been intentionally concealed. It is further stated that the plaintiff's suit is barred under Section 41 (H) of the Specific Relief Act (for short – 'the Act') as well as Order 2 Rule 2 CPC as the plaintiffs despite having an opportunity, did not file any counter claim in the suit filed by the defendant. It is denied that the plaintiffs are the owners in possession of the property, as there is no valid instrument conveying title in their favour. Furthermore, the plaintiffs, it is stated, gave incorrect dimensions of the suit property and nine feet (9') of the defendant - appellant's property was stated to be included in the

dimensions given by the plaintiffs. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled for decree of permanent injunction? OPP.
2. Whether the present suit is not maintainable in the present form? OPD.
3. Whether the plaintiff has not come to the court with clean hands on the grounds mentioned in para No. 2 of the legal objection in the written statement? OPP.
4. Whether the suit is barred under Section 2 Rule 2 CPC? OPD
5. Relief.

Learned trial Court on considering the evidence on record decreed the suit filed by the plaintiffs while holding that ownership and possession of the plaintiffs over the suit property was proved by the evidence on record. It is further observed that the plaintiffs' suit was not barred under Order 2 Rule 2 CPC as the property involved in both the suits was different. The suit was also not found barred by Section 21(H) of the Act. Appeal filed by the appellant - defendant was dismissed by the learned District Judge, Fatehgarh Sahib vide judgment dated 11.05.2012. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that under the garb of the decree granted in their favour, the respondents – plaintiffs are trying to encroach upon the appellant's land. It is further contended that the appellant had filed a suit for permanent injunction against the respondents – plaintiffs at an earlier point of time, therefore, it was incumbent upon the plaintiffs to file a counter claim in the said suit itself. A separate suit filed by the respondents is not maintainable and their suit

deserves to be dismissed on this ground alone. He relies upon the judgment of the Hon'ble Supreme Court **Coffee Board vs. M/s Ramesh Exports Pvt. Ltd. 2014 (3) RCR (Civil) 104**. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 07.09.2010 passed by the learned Civil Judge (Junior Division), Amloh as well as judgment and decree dated 11.05.2012 passed by the learned District Judge, Fatehgarh Sahib be set aside and the suit filed by the respondent-plaintiffs be dismissed throughout.

Learned counsel for the respondents while refuting these averments submits that both the learned courts below have rendered concurrent findings of fact against the appellant – defendant which call for no interference. There is no ground whatsoever for setting aside the said judgments. The suit filed by the appellant – defendant was in respect to different property, therefore, there is no question of any application of Order 2 Rule 2 CPC in this case. He relies upon the judgment of the Hon'ble Supreme Court in **S. Nazeer Ahmed v. State Bank of Mysore and others 23007 (1) RCR (Civil) 705**. It is further argued that relief has been afforded to the respondents – plaintiffs only in respect to Khasra No. 2/2/12/4. There is, thus, no question of any encroachment by the plaintiffs upon land belonging to the appellant. Moreover, the learned District Judge, Fatehgarh Sahib has specifically observed that it is open to either of the parties to seek demarcation of the property from the revenue authorities. Thus, it is prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the appellant is unable to deny that the

decree passed in favour of respondent – plaintiffs is in respect to the land comprised in Khasra No. 15//2/2/12/4 (0-7) whereas the defendant is admittedly not the owner of the suit property. The plaintiffs have relied upon the sale deeds dated 10.08.1982 and 05.02.2003 to prove their title to the same. Learned trial Court has rightly held that challenge to the sale deed dated 05.02.2003 (Ex.P3) in favour of the plaintiff by one Raksha Rani cannot be of any benefit to the defendant. Raksha Rani had sought relief of possession of half share of the property alongwith relief of permanent injunction. Evidence on record proves the possession of the plaintiffs over the suit property. Defendant – appellant is admittedly owner of the property adjoining the suit property. Similarly, it is a matter of record that the property involved in the suit for permanent injunction titled 'Gain Chand versus Chaman Lal and another' filed by the present appellant is pertaining to property, which is admittedly different from the present suit property.

Learned counsel for the appellant is unable to deny that the decree, in the present case, has been passed in favour of the plaintiffs in respect to property measuring 7 marlas comprised in khasra No. 2/2/12/4 and the earlier suit was in respect to different property. Thus, the property in both the suits being different, clearly renders the argument regarding the plaintiffs suit being barred under Order 2 Rule 2 CPC to be devoid of any merit. The same is, hence, rejected. Moreover, the apprehension raised by learned counsel for the appellant that the plaintiffs – respondents are trying to encroach upon the appellant's land in the garb of the decree granted in their favour is clearly misplaced. Learned District Judge, Fatehgarh Sahib has specifically observed that the grant of permanent injunction shall be operative only in respect to khasra No. 2/2/12/4 without defining the

location or boundaries thereof and it will be open for either of the party to seek demarcation of the property from the revenue authorities in case some dispute still subsists between the parties in respect to the suit property.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. Learned counsel is unable to point out any ground as specified in Section 41 of the Punjab Courts Act, 1918 to interfere in the impugned judgments. It has been held by the Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs and others versus Chandrika and others 2016 (2) RCR (Civil) 245** and **Kirodi (since deceased) through his LR versus Ram Parkash and others in Civil Appeal No. 4988 of 2019, SLP (C) No. 11527 of 2019** that a second appeal insofar as the State of Punjab is concerned, does not require a formulation of a substantial question of law, due to applicability of the Punjab Court Act, 1918. However, in the present case, no such question also arises for adjudication in this case.

In my considered opinion, there is no illegality, infirmity or perversity in impugned judgment and decree dated dated 07.09.2010 passed by the learned Civil Judge (Junior Division), Amloh as well as judgment and decree dated 11.05.2012 passed by the learned District Judge, Fatehgarh Sahib, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

August 30, 2019
rts

(Lisa Gill)
Judge

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