

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 5366 of 2012(O&M)
Date of Decision:13.3.2019**

Ramji Dass

---Appellant

vs.

Ajit Singh and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vaibhav Sehgal, Advocate
for the appellant
Mr. N.S.Diwana, Advocate
for the respondents

Rekha Mittal, J.

CM No.4510-C of 2018

Prayer in this application is for recalling order dated 1.3.2018 whereby the appeal has been dismissed for non-prosecution.

In view of averments made in the application supported by an affidavit of Sh. Vaibhav Sehgal, Advocate, counsel for the applicant-appellant and arguments advanced, application is allowed, order dated 1.3.2018 is recalled, and the appeal is restored to its original number and stage and is taken on Board today itself.

Disposed of accordingly.

Main case

CM No. 15034-C of 2012

Prayer in this application is for condoning delay of 18 days in

filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 18 days in filing the appeal stands condoned.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against consistent findings recorded by the courts whereby suit for permanent injunction restraining the respondents-defendants from interfering, encroaching and dispossessing the appellant qua land measuring 1 kanal 13 marlas comprising khasra No. 67//5 khewat No. 833 khatauni No. 856 as entered in the jamabandi for the year 2001-02 situated at village Siar, Tehsil Payal District Ludhiana was dismissed by the trial court vide judgment and decree dated 14.1.2011 and appeal preferred by unsuccessful plaintiff-appellant was dismissed on 24.7.2012 by the Additional District Judge, Ludhiana.

The appellant-plaintiff has claimed to be owner in possession of suit land on the basis of sale deed dated 21.6.2001 executed by Sh. Sukhdev Singh son of Nand Singh. It is averred that mutation on the basis of sale deed aforesaid has been sanctioned in favour of the plaintiff and he is in possession of the same since the date of its purchase. The suit land adjoins other property of plaintiff and he has opened a door from that property towards suit land. Earlier, the appellant was using the suit land for tethering his cattle and storing manure and as a courtyard. He has raised wall upto the level of 7 feet in height and also purchased other building

material for raising construction. The respondents with an intention to stop the appellant from raising construction, forcibly demolished wall and took away bricks, girders and other building materials on 13.6.2006. Hence the present suit.

The respondents-defendants filed joint written statement raising preliminary objections that the suit is not maintainable as Sukhdev Singh son of Nand Singh from whom the plaintiff is alleged to have purchased the suit land did not have any right to sell the suit land. The suit land along with other property comprised in khasra Nos. 56//23/2, 67//4,5,6,7 was allotted to harijans in the consolidation proceedings. Sukhdev Singh challenged consolidation proceedings and allotment was cancelled by Consolidation Officer vide order dated 3.2.1960. The appeal preferred by harijans was accepted and order dated 3.2.1960 was set aside by the Settlement Officer vide order dated 9.6.1960 which was further upheld by the Assistant Collector Consolidation vide order dated 15.11.1960. A petition under Section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act was filed and accepted by the Additional Director vide order dated 14.10.1982 and he set aside the order dated 9.6.1960. Civil Writ Petition was filed in the Punjab and Haryana High Court against order dated 14.10.1982 and the same was accepted by the High Court and order dated 14.10.1982 was set aside. Thus, the order of allotment dated 9.6.1960 has become final. Mutation was sanctioned in favour of Sukhdev Singh by the then Assistant Collector Ist Grade, Siahar in respect of suit land and another land. Appeal filed by 50 harijans of village Siahar was accepted by the then Collector vide order dated 30.7.2002 and

mutation proceedings were remanded to the Assistant Collector Ist Grade for deciding the same afresh. Later, the Assistant Collector Ist Grade, Payal vide order dated 22.5.2005 sanctioned mutation in favour of harijans and appeal against that order is still pending. It was further averred that the appellant has not come to the court with clean hands as he has suppressed material facts regarding previous litigation ensued between the parties and as such he is not entitle to discretionary relief.

The trial court framed issues, reproduced in para 4 of the judgment of said court. The parties were permitted to adduce evidence in support of their respective contentions and they led evidence, noticed in paras 6 and 7 of the judgment of trial court. The trial court answered issue No. 1 with regard to entitlement of the appellant to injunction against the plaintiff and eventually the suit was dismissed. As has been noticed hereinbefore, appeal preferred by unsuccessful appellant-plaintiff did not find favour with the first Appellate Court.

Counsel for the appellant would argue that even if plea of the plaintiff-appellant in respect of ownership of suit land is not accepted, the appellant being in settled possession of suit land can not be dispossessed except in due course of law. To substantiate his contention with regard to his possession, he has relied upon entries in the jamabandi for the year 2001-02 and copies of documents i.e. jamabandis and khasra girdawaris sought to be produced by way of additional evidence on the basis of application under Order 41 Rule 27 of the Code of Civil Procedure, filed before this Court. It is further argued that in the jamabandis and khasra girdawaris, appellant is recorded to be in possession of suit land, therefore,

he is entitle to protect his possession against forcible dispossession by the respondents/defendants. It is further argued that Civil Suit No. 160/20.3.1993 titled “Jit Singh and another vs. Sukhdev Singh and others” for permanent injunction and possession of land measuring 6 kanals including rectangle No. 67 killa No. 5 has been filed for possession in which Jit Singh defendant No. 3 is also one of the plaintiffs, sufficient to show that respondents are not in possession of land comprising khasra No.67//5.

Counsel representing the respondents would argue that consistent findings recorded by the courts do not warrant intervention as the appellant has failed to substantiate his plea that the same are perverse or a question of law is involved for adjudication. It is further argued that Sukhdev Singh through whom the appellant is claiming rights in suit land filed civil suit No. 243 of 4.5.1987 titled “Sukhdev Singh vs. Joginder Singh and others” for declaration and permanent injunction in respect of land in question and the said suit was dismissed by the trial court on 24.5.1996 whereby plea of Sukhdev Singh in respect of his ownership and possession of the land in question was rejected and judgment passed in the said case has attained finality. It is vehemently argued that as Sukhdev Singh failed to establish his possession of suit land, plea of the appellant that he was delivered possession of suit land by Sukhdev Singh on the basis of sale deed dated 21.6.2001 despite having no right of ownership in the said land has rightly been rejected by the courts when otherwise the orders with regard to allotment of land in favour of harijans of the village in consolidation proceedings have attained finality upto Hon'ble the High

Court.

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

Counsel for the appellant has not disputed that Sukhdev Singh son of Nand Singh filed the aforesaid civil suit in respect of land measuring 32 kanal 18 marlas including land of khasra No. 67//5 (subject matter of the present suit) claiming ownership and permanent injunction on the plea of his being in possession of said land but the suit was dismissed way back in the year 1996. No sooner plea of Sukhdev Singh in respect of possession of suit land was rejected by civil court, it is difficult to accept contention of the appellant that possession of suit land was delivered to him by Sh. Sukhdev Singh on the basis of sale deed dated 21.6.2001. Counsel for the appellant has not disputed that the suit land is shown to be gair mumkin ruri in the jamabandi. As the land in question is not cultivable land, the appellant cannot derive any advantage to his contention from entries in the khasra girdawaris regarding his possession. The girdawari is to be prepared by the revenue authorities in respect of land which is under cultivation. In view of the above, I find it difficult to accept contention of the appellant that consistent findings recorded by the courts suffer from an error much less illegality that would call for intervention. I would hasten to add that filing of civil suit No. 160 of 1993 by Jit Singh and another claiming possession against Sukhdev Singh and others in which the appellant admittedly has not been impleaded on the array of defendants, would not enure to his benefit to establish his plea of possession of suit land. As the appellant failed to establish his being in possession of suit land, he can not assert his claim for grant of discretionary and equitable relief of injunction.

In view of what has been discussed hereinbefore, finding no
merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

13.3.2019
paramjit

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