

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

RSA No. 3304 of 2013(O&M)

Date of decision: 18.7.2019

Surinder Singh through his LRsAppellant

VERSUS

Gurbir Kaur and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Raman Sharma, Advocate for the appellant.

Mr. Robin Dutt, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction in respect of house in dispute was decreed by the trial Court and the defendants/appellants were restrained from interfering in peaceful ownership and possession of the plaintiff over the suit property by dispossessing her illegally and forcibly and from alienating or transferring the suit property in favour of any other person by way of sale, lease, mortgage, gift, creating any charge or in any other manner whereas counter claim filed by the defendants was dismissed.

The appeal preferred by defendants No.1 and 2 wherein defendant No.3 was arrayed as performa respondent was dismissed by the

Additional District Judge, Yamunanagar at Jagadhari vide judgment and decree dated 21.05.2013.

The present litigation is a family feud wherein the suit has been filed by Gurbir Kaur daughter of Harnam Singh against her three brothers namely Jasbir Singh, Surinder Singh and Jeet Singh. The respondent/plaintiff has staked her claim to the suit property on the basis of decree dated 03.06.1995 passed in civil suit No.423 of 1995. She has claimed her exclusive possession of the suit property, therefore, entitle to seek injunction restraining the defendants from interfering in her possession over the suit property.

The defendants filed written statement and contested claim of the plaintiff/respondent that she is either owner or in possession of the suit property and entitle to relief of declaration or injunction. Defendants No.1 and 2 filed counter claim to assail the decree dated 03.06.1995 passed on the basis of purported consent recorded by Sh. Harnam Singh.

During the course of hearing before the trial Court, the respondent/plaintiff did not press her claim for declaration that she is owner in possession of suit property and accordingly issue No.1 in respect of declaration was not decided on merits and was held to be given up. However, in view of findings on issue No.2 pertaining to entitlement of the respondent/plaintiff to permanent injunction, the trial Court decreed the suit as noticed hereinbefore.

Counsel for the appellant has assailed consistent findings recorded by the Courts primarily on two grounds. It is argued that the respondent/plaintiff sought the relief of declaration in respect of her

ownership of the suit property on the basis of decree dated 03.06.1995 but since Sh. Harnam Singh against whom the said decree was passed had denied his having suffered any such decree in favour of the respondent/plaintiff, the respondent/plaintiff intentionally gave up her claim for declaration. It is vehemently argued that Sh. Harnam Singh never suffered any such decree in favour of the respondent/plaintiff, findings of the Courts that she is entitle to injunction from interference in peaceful ownership and possession cannot be allowed to sustain.

Another submission made by counsel is that as relief of injunction was sought as a consequential relief and the respondent/plaintiff had withdrawn suit for declaration, the respondent/plaintiff has wrongly been allowed relief of injunction not only in respect of dispossession from suit property but also restraining the respondents/defendants from alienating or transferring the suit property in favour of any other person by way of sale, lease, mortgage, gift etc.

Counsel representing the respondent/plaintiff, on the contrary, has supported findings of the Courts with the submission that as Harnam Singh, erstwhile owner of the suit property and father of the parties, suffered consent decree dated 03.06.1995 in favour of the respondent/plaintiff and till the time the said decree is set aside in appropriate proceedings, the Courts have rightly held that the plaintiff/respondent is entitle to injunction as prayed for. As such, the decree passed by the trial Court and affirmed in appeal cannot be faulted with. It is further argued that Harnam Singh did not challenge the decree dated 03.06.1995 knowing fully well that the respondent/plaintiff is staking

her claim on the basis of said decree passed in civil suit No.423 of 1995. According to counsel, in the face of decree dated 03.06.1995 declaring the respondent/plaintiff as owner of the suit property, there was no need for the respondent to seek any such declaration and for that reason, she did not press her claim for declaration qua absolute ownership of the suit property.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned.

The respondent/plaintiff has staked her claim to the suit property in respect of her ownership and possession on the basis of decree dated 03.06.1995 passed in civil suit aforesaid filed against Sh. Harnam Singh, admittedly, erstwhile owner of the suit property. There is nothing on record suggestive of the fact that Harnam Singh despite gaining knowledge of the decree aforesaid ever challenged the said decree on any ground whatever. As such, the decree dated 03.06.1995 holds the field till date in view whereof, the respondent/plaintiff became owner of the suit property as against its erstwhile owner Sh. Harnam Singh. Both the Courts have consistently held that the respondent/plaintiff is in possession of the suit property as owner on the basis of decree dated 03.06.1995, therefore, she is entitle to protect her possession and seek injunction against alienation of suit property by the defendants including the appellants. Since in the present case, in view of discussion made hereinbefore, relief of injunction cannot be said to be consequential of allowing a declaration qua ownership of the respondent/plaintiff, contention of the appellants that she is not entitle to relief of injunction on account of having given up her claim qua declaration is not meritorious. In this context, reference can be made

to judgment of the Gujarat High Court **Padhiyar Prahladi Chenaji Vs. Maniben Jagmalbhai Deceased thro heirs, 2019(1) GLR 782.**

Counsel for the appellants has made a vain attempt to argue that the present appeal may be disposed of but the appellants may be left at liberty to challenge the decree dated 03.06.1995 since Harnam Singh is no longer alive. There is no question of giving any liberty to the appellants to challenge the decree dated 03.06.1995. However, they may take recourse to appropriate proceedings to challenge decree dated 03.06.1995, if permissible in law, particularly in the face of that counter claim preferred by them to challenge that decree has been rejected by the Courts.

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

JULY 18, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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