

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1584 of 2015 (O&M)

Date of decision : 17.7.2019

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Hans Raj and another

.....Appellants

vs.

Bhagwan Dass and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.K. Aneja, Advocate and
Mr. Yogesh Aneja, Advocate for the appellants

Ms. Nupur Chaudhary, Advocate for the respondents.

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H. S. Madaan, J.

Briefly stated, facts of the case are that Bhagwan Dass, aged 70 years son of Tota Ram son of Ranjha Ram alongwith Bhajan Lal aged 25 years son of Jawahar Ram son of Gurriya Ram, both residents of village Neolla, Tehsil Fazilka, District Ferozepur, had brought a suit against the defendants Hans Raj and Gurminder Ram, sons of Gurriya Ram son of Tota Ram, residents of that very village, seeking a decree for permanent injunction, restraining the defendants from dispossessing the plaintiffs or interfering into their peaceful possession over the land measuring 21 kanal 10 marlas comprised in Rect. No. 40 Killa No. 21/1 (7-12) Rect. No.41 Killa No. 24 (5-18),

25 (8-0), Khewat No. 6 Khatuni No. 9 Min situated at village Gulam Rasul, Tehsil Fazilka as per jamabandi for the year 2006-07, on the averments that they are in peaceful cultivating possession over the suit land as tenant (Gair Marusi), under Raj Kumari, Bimla Kumari, Bhajan Lal, Amar Nath, Madan Lal, owners of the suit land; that they had cultivated and harvested the Hari 2008 crops and were preparing the land for Sawni 2008 crop; that name of plaintiff No.1 has been incorporated in the jamabandi as well as Khasra Girdawari, reflecting possession of the plaintiffs over the suit land; that the defendants have no concern with such land, but since they desired to dispossess the plaintiffs from the said suit land, to which they had no right, feeling threatened, the plaintiffs knocked at the door of the Court by way of filing the civil suit in question.

On notice, both the defendants appeared and filed a joint written statement, contesting the suit, raising various legal objections, challenging the maintainability of the suit in the present form; the locus stand of the plaintiffs to bring the suit, further contending that no cause of action had arisen to the plaintiffs to bring the suit since they have no concern with the suit land and the land is recorded in the name of answering defendants in the Khasra Girdawari and they have sown wheat crop in the said land; that the plaintiff have concealed the true and material facts from the Court. On merits, the defendants controverted the assertions made in the plaint, while praying for dismissal of the suit.

The defendants had filed a counter claim contending that they are in possession of the land measuring 16 kanals comprised in

Rect. No.40 Killa No.21/1 (2-2), Rect. No.41, Killa No. 24 (5-18), 25 (8-0), Khewat No.6 Khatauni No.9, as per jamabandi for the year 2006-07, situated within revenue estate of village Gulam Rasul Tehsil Fazilka; that father of defendant/claimants and Bhagwan Dass respondent being brothers had separated the cultivation of land and father of defendants/claimants cultivated the land even before the year 1990 and he had been in possession ever since, paying abiana to Lambardar of the village and after death of father of the claimants, the claimants came into cultivating possession of that land paying abiana (water cess) and chowkidar tax to the Lambardar of village Gulam Rasul; that defendant-claimants are being reflected to be in possession of Khasra Girdawari as well as the Girdawari prepared by the Canal Department, name of father of the defendants is there. The defendants had requested the plaintiff-respondents to get the entries corrected in their name, but to no effect, as such defendants had filed an application for correction of Khasra Girdawari, before the Assistant Collector IInd Grade in January 2008, that application was accepted by the said Authority on 13.10.2008. Feeling aggrieved, respondents Bhagwan Dass etc. had filed an appeal before the Collector, Fazilka and the suit in question having been filed on 9.6.2008, is a counter blast to those proceedings. The appeal filed by Bhagwan Dass etc. before the Collector, Fazilka was dismissed on 23.12.2009. Though the plaintiff have no right or concern with the suit property, but they threatened to dispossess the defendants therefrom, illegally and forcibly.

Replication to the written statement and reply to the counter claim was filed by the plaintiffs, contesting the assertions in the claim petition.

From the pleadings of the parties, following issues were framed vide order dated 12.3.2009 :-

1. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the suit is not maintainable in the present form?
OPD
3. Relief.

Vide order dated 3.8.2010, following issues were framed after filing of the counter claim :-

1. Whether plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the defendants/counter – claimants are entitled to the relief of permanent injunction as prayed for ? OPD
3. Whether the suit of the plaintiffs is not maintainable?
OPD
4. Whether the plaintiffs are estopped by their own acts and conducts? OPD
5. Whether the counter claim of the defendants is not maintainable? OPP
6. Relief

In order to prove their case, plaintiffs examined Punjab Ram as PW-1, Satnam Chand as PW-2, Bhajan Lal as PW-3, Harjit Singh Namberdar as PW-4 and Bhagwan Dass as PW-5 and thereafter

closed their evidence.

On the other hand, defendants examined Karnail Singh as DW-1, Jhanda Ram as DW-2, Hans Raj as DW-3, Charanpreet Singh as DW-4, Raj Kumar as DW-5, Kashmir Singh Nambardar as DW-6 and thereafter closed the defence evidence.

After hearing the arguments, the trial Court decided issue No.1 against the plaintiffs and in favour of the defendants. Issue No.2 was decided in favour of defendants and against the plaintiffs, Issues No. 3 and 4 were decided against the defendants and in favour of the plaintiffs. Issue No. 5 was decided in favour of the defendants and against the plaintiffs. Resultantly, the suit filed by the plaintiffs was dismissed with costs. However, counter claim brought by the defendants was decreed and respondents were restrained from causing any forcible, illegal and unauthorized interference into peaceful possession/enjoyment of claimants over land measuring 16 kanals comprised of Rect. No.40 as detailed in the head note of the plaint except in due course of law. This was so done vide judgment and decree dated 1.2.2014.

The plaintiffs felt aggrieved by the said judgment and decree and they had brought an appeal to the District Judge, Fazilka, which was assigned to Additional District Judge, Fazilka, who vide judgment and decree dated 30.10.2014, accepted the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs qua land measuring 21 kanals 10 marlas and respondents were restrained from dispossessing the appellants from the land in dispute whereas the counter claim filed by the

respondents qua land measuring 16 kanals was dismissed.

Now it was turn of the defendants to feel dissatisfied and they have knocked at the door of this court by way of filing the present appeal, notice of which was given to the plaintiffs-respondents.

I have heard learned counsel for the parties besides going through the record and I find that the judgment and decree passed by the Ist Appellate Court are not sustainable.

Section 38 of the Specific Relief Act, 1963 provides as to when Permanent/Perpetual injunction is to be granted. It provides that perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

As per sub-section (2), this relief may be granted when any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II. As per sub section (3), When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

A very look at the provision, goes to show that permanent injunction is a discretionary, equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances including the conduct of the parties and no person can claim this relief as a matter of right.

Furthermore, Section 41 deals with eventualities when injunction is to be refused. One of such eventualities is that when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court. If viewed in light of such provisions, the plaintiffs had miserably failed to make out a case for grant of permanent injunction. The trial Court was fully justified in dismissing the suit. However, the Ist Appellate Court by misappreciation of evidence and wrong interpretation of law, fell in error in reversing the judgment and decree passed by the trial Court and decreeing the suit of the plaintiffs.

As it comes out from the record the proceedings initiated by the defendants for correction of Khasra Girdawari were pending on 9.6.2008, when the plaintiffs had brought the civil suit, but they did not make any mention in that regard in their pleadings, which goes to show that they had tried to conceal the material fact from the Court. On that score alone, the suit deserved to be dismissed.

Though the plaintiffs claim to be in cultivating possession of the suit land measuring 21 kanal 10 marlas as Gair Marusi (tenant), after filing of the suit the plaintiffs came up with a version that they

had purchased the suit land vide sale deed dated 9.1.2012 from its owners, as such had become owners of the suit land.

In a suit for permanent injunction, the crucial thing to be determined is as to whether the plaintiffs had been successful in proving their possession at the spot. To determine possession of the land bearing khasra numbers, revenue record in the form of jamabandis and Khasra Girdawaris is best evidence. The public officials preparing such record in discharge of their official duties have no motive to prepare record contrary to the factual position at the spot. It is for that reason that presumption of truth is attached to entries in the jamabandi under Section 44 of the Punjab Land Revenue Act and Khasra Girdawari is a relevant piece of evidence.

In support of their case, the plaintiffs had proved in evidence khasra Girdawaris Exhibits P-3 to P-10 from Sauni 2007 to Hari 2009, but in khasra Girdawari for Sauni 1990 name of Guranditta Ram son of Tota Ram was reflected with regard to Khasra Number 40 Rect. 21/1-2 and 41 Rect. 24-25. Assistant Collector Grade II on 13.10.2008, after visiting the spot had corrected the khasra Girdawari in the name of father of defendants namely, Guranditta Ram. Girdawari from Sauni 2008 reflects such position. The appeal filed by the plaintiffs against the order passed by Assistant Collector Grade II for correcting the Khasra Girdawari stood dismissed and the revision filed by him against the order of SDM, Fazilka, had also been dismissed by Commissioner, Ferozepur Division, Ferozepur on 1.11.2012. The revenue record rather reflects possession of the defendants. The oral evidence

adduced by the defendants also corroborates their version. Thus, the trial Court had rightly rejected the claim of the plaintiffs and allowed claim of the defendants.

Learned Additional District Judge, Fazilka, has observed in para No. 14 of its judgment that impugned judgment in question is liable to be set aside for the reason that even if the trial Court had come to the conclusion that respondents had been able to prove their counter claim qua land measuring 16 kanals, even then suit of the plaintiffs was regarding land measuring 21 kanals 10 marlas and nothing had been mentioned by the trial Court regarding the remaining land measuring 5 kanals 10 marlas, regarding which the plaintiff had sought relief of permanent injunction. The reasoning given is not convincing. Once the claim of the plaintiffs to be in possession of the entire suit land stood falsified, since defendants were found to be in possession of land measuring 16 kanals out of the suit land, the plaintiffs could not be granted injunction with regard to remaining 5 kanals 10 marlas of land. The Ist Appellate Court proceeded with the wrong approach and rejected the order passed by Commissioner, Ferozepur Division, Ferozepur, for the reason that the order was dated 1.11.2012, whereas the suit was filed by the plaintiffs on 2.6.2008 and as such order dated 1.11.2012 was passed during pendency of the suit.

However, the situation is somewhat different. The application for correction of Khasra Girdawari is stated to have been filed in January 2008 before Assistant Collector Grade II, Fazilka, which was allowed vide order dated 13.10.2008. An appeal against it

was dismissed by Ist Appellate Authority on 13.12.2009, whereas 2nd Appeal was dismissed by Commissioner, Ferozepur Division, Ferozepur on 1.11.2012. The appeal is nothing but continuation of the original proceedings, which were admittedly initiated much before filing of the civil suit by the plaintiffs Bhagwan Dass and Bhajan Lal. Therefore, those proceedings before revenue authorities and orders passed by them cannot be ignored or rejected for the reason that those were passed after filing of the suit. As a matter of fact, as already noticed earlier, plaintiffs are guilty of withholding information with regard to initiation of proceedings by defendants against them for correction of Khasra Girdawaris.

It may be mentioned here that plaintiffs should have filed two appeals against the judgment and decree passed by the trial Court, one with regard to dismissal of their suit and second with respect to decreeing of the counter claim. However, they did not do so.

An arguments has been advanced by learned counsel for the appellants that for the said reason it is to be taken that the counter claim decreed against them became final and binding upon the plaintiffs and they cannot wriggle out of the same. In support of their contention, learned counsel for the appellants have referred to authority reported as **Sukhdev Singh vs. Baldev Singh (2014-4) PLR 651**, by a Co-ordinate Bench of this Court, wherein dealing with a similar situation, where plaintiff had not preferred separate appeal challenging the acceptance of counter-claim of defendant No.1, that was taken to mean that plaintiff had accepted the

impugned judgment for the reason that counter claim is just like an independent suit and two appeals ought to have been filed and in absence of the same, principle of res judicata will apply.

Though learned counsel appearing for the respondents contended that since the trial court had dismissed the civil suit filed by the plaintiffs and decreed the counter claim filed by the defendants against the plaintiffs, vide a single judgment and decree, two appeals were not required to be filed. In support of her that contention, she referred to the judgment passed by a Co-ordinate Bench of this Court on 2.2.2018 in **RSA No. 3007 of 2012 (O&M) titled as ' Gurjant Singh and others vs. Chand Singh'** , wherein it was observed that if there is one decree, one appeal would lie and even otherwise provisions of Order 41 Rule 33 CPC are no longer res integra and a party who has not even filed the cross objections, can always challenge the findings under the aforementioned provisions.

However, this authority was not with regard to a decree dismissing the civil suit and decreeing the counter claim. Therefore, the case of the respondents is bound to suffer on account of their omission to file two separate appeals.

No other cogent or convincing reason has been given by the Ist Appellate Court while setting aside the legal and valid judgment passed by the trial Court.

It may be mentioned here that during the proceedings for correction of Khasra Girdawari, Bhagwan Dass had admitted possession of the defendants. Therefore, since plaintiffs have failed

to establish that they have been in possession of the suit land, they are not entitled to protect it at the hands of the defendants, by way of filing a civil suit. The suit is liable to be dismissed, whereas the counter claim by defendants deserves to be allowed. It is precisely what has been done by the trial Court.

Therefore, the present appeal is accepted, the impugned judgment and decree dated 30.10.2014, passed by Additional District Judge, Fazilka are set aside, where as judgment and decree dated 1.2.2014, passed by Civil Judge (Senior Division), Fazilka, are restored.

17.7.2019
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(H.S. Madaan)
Judge

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