

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

RSA-10-2014 (O&M)

Date of decision: 14.10.2019

Ajaib Singh

...Appellant

Versus

Baldev Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. H.S. Batth, Advocate for the appellant.

Ms. Meenu Salwan, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Ajaib Singh son of Sudh Singh had brought a suit against defendants total 19 in number i.e. Baldev Singh and others, seeking permanent injunction to the effect that plaintiff is owner in possession of land measuring 15K-12M out of land measuring 27K-12M, situated at Village Sabhra, Tehsil Patti, District Tarn Taran as per jamabandi for the year 2004-05 and the defendants have got no right, title or concern therewith and further restraining the defendants from interfering in peaceful possession of the plaintiff over the said land or dispossessing the plaintiff illegally and forcibly therefrom and further restraining the defendants from alienating the suit property to any other person. As per version of the plaintiff, he is owner in possession of the land measuring 15K-12M detailed in headnote of the plaint, with which the defendants have no right or concern but they

have forged some Will dated 22.11.2001 said to have been executed by one Ram Singh in favour of Gurdial Singh and others. According to the plaintiff, no such Will was ever executed and if its execution is proved, the same is illegal, null and void and seems to be result of fraud, as such, ineffective qua rights of the plaintiff. Furthermore, alleged brothers of Sh. Ram Singh had died long back, alleged sons of alleged brothers of Ram Singh had also died long time back. Sh. Ram Singh did not reside in any villate in Uttranchal upto his death, rather, he used to reside in a foreign country and his legal heirs were also residing there. The defendants being head strong persons threatened to dispossess the plaintiff from the suit property and tried to alienate the same to some other person, to which, they had got no right. Feeling aggrieved the plaintiff had brought the suit in question.

On being put to notice, defendants No.1 to 10 and 12 to 16 appeared and filed a written statement, contesting the suit, raising preliminary objections that the plaintiff had not approached the Court with clean hands and the suit was not maintainable; the plaintiff had not mentioned in which khasra number, he has been in possession and in what capacity; the revenue record is wrong and is not correct; the answering defendants are owners in possession as co-sharers in the land in dispute, with which, the plaintiff has got no concern. The answering defendants had taken up various legal objections and on merits, controverted the assertions in the plaint and in the end, prayed for dismissal of the suit.

Defendants No.11 & 17 had not been appeared despite service, as such, they were proceeded against ex parte, whereas, plaintiff had withdrawn suit against defendants No.18 and 19.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has not come to the Court with clean hands? OPP.
3. Whether the present suit is not maintainable in the present form? OPD.
4. Whether the present suit is barred by limitation? OPD.
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
6. Whether Ram Singh executed a valid Will in favour of replying defendant? OPD.
7. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of his evidence, the plaintiff Ajaib Singh stepped into the witness box as PW1 and reiterated his case as given in the plaint. He also examined Karam Singh as PW-2 and Darbara Singh as PW-3. In rebuttal, defendant Balwinder Singh got his statement recorded as DW1, defendant Resham Singh appeared as DW2, Balbir Singh as DW3.

After hearing arguments, the trial Court decided issues No.1 and 6 against the defendants and in favour of the plaintiff, issues No.1 to 5 against the defendants and in favour of the plaintiffs. Resultantly, vide

judgment and decree dated 27.07.2012, suit of the plaintiff was decreed and the defendants were permanently restrained from interfering in peaceful possession of the plaintiff over land measuring 15K-12M, detailed in headnote of the plaintiff. They were further restrained from dispossessing the plaintiff from the said land illegally and forcibly and from alienating that land in favour of any other person.

The contesting defendants felt aggrieved by the said judgment and decree passed by the trial Court and had preferred an appeal, which was accepted by Addl. District Judge, Tarn Taran. The impugned judgment and decree passed by the trial Court were set aside and the suit filed by the plaintiff was dismissed, vide judgment and decree dated 07.11.2013.

Now, it was turn of the plaintiff to feel aggrieved and he has knocked at the door of this Court, praying that his appeal be accepted and the impugned judgment and decree passed by learned ADJ, Tarn Taran be set aside and that of Civil Judge (Jr. Divn.) Patti, decreeing the suit be restored.

Notice of the appeal was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal. The judgment passed by the trial Court was result of misappraisal of evidence and wrong interpretation of law and the said judgment and decree were rightly set aside by the Addl. District Judge, Tarn Taran. Learned ADJ

had found material flaws in the case of plaintiff and for that reason, his claim had been rejected. Learned ADJ in para No.9 of the judgment has observed that the revenue record has been proved on file by the plaintiff as Ex.P1 to Ex.P4 and by defendant Ex.D1 to Ex.D4 and a perusal of Ex.D1 shows that in khasra girdawari for the period Souni 1995 till 2009, though plaintiff is shown to be in column of possession, however, name of Baldev Singh figures in column of ownership and possession of Ajaib Singh has been shown through appellant/defendant Baldev Singh with regard to the land bearing khasra No.273//15 and 274//11. It has been further observed that revenue record from Ex.P1 to Ex.P3, was only qua land bearing khasra No.273//15 and 274//11 whereas the suit had been filed by plaintiff Ajaib Singh regarding 15K-12M of land. Plaintiff had placed on file jamabandi pertaining to khasra No.273//15 and 274//11 only and revenue record pertaining to remaining land had not been proved whereas in the revenue record produced by defendants Ex.D1 to Ex.D4, defendants Gurdial Singh, Jagat Singh and Kashmir Kaur are shown in column of ownership qua land bearing khasra No.273//15, 16, 17/1 and 274//11, which is for the year 1984-85 and name of Ajaib Singh does not figure anywhere. The plaintiff had claimed that he has been owner in possession of the land in dispute for the last 15-20 years. The suit was filed by him in the year 2010. Though, the plaintiff had claimed that some sale deeds executed by some of defendants in his favour but no such sale deeds were brought on record by him. Learned ADJ had noticed that even in the latter jamabandies for the year 1989-90 Ex.D2, mutation

was shown to have been entered in the name of defendants Paramjit Singh and Gursharan Singh, whereas in the plaint, the plaintiff had not mentioned with regard to ownership of some portion of the land belonging to defendants Paramjit Singh and Gursharan Singh, which amounts to concealment of facts. It has further been noticed that although in Ex.D2, mutation is shown to have been entered qua some portion of land in dispute in the name of Ajaib Singh but such entry was not sufficient to prove that Ajaib Singh was owner in possession of land measuring 15K-12M, since in Ex.D3, names of Baldev Singh, Basant Singh and Gurdial Singh are there in column of ownership as well as in column of possession. The plaintiff was further shown to have concealed material fact with regard to the pendency of litigation between the parties in the form of civil suit titled 'Resham Singh and others Vs. Balwinder Singh', where Ajaib Singh has been impleaded as defendant No.8.

The reasoning given by learned Addl. District Judge, Tarn Taran for non-suiting the plaintiff is proper and appropriate and does not call for any interference. Since the land is still joint and the plaintiff has been unable to prove his exclusive possession over 15K-12M of land, much less under any arrangement consented to by other co-sharers or say any family arrangement/settlement and in view of his conduct in concealing material facts from the Court as has been pointed out by learned ADJ in the impugned judgment, the plaintiff is certainly not entitled to discretionary relief of permanent injunction. If he has got any grouse, he can get his share partitioned by approaching the revenue

authorities but under the circumstances, is not entitled to grant of any injunction. It may be mentioned here that the form of civil suit was itself defective. The plaintiff had filed the suit for permanent injunction that he is owner in possession of land measuring 15K-12M without seeking a specific declaration in that regard. He cannot possibly get a declaration in garb of injunction. The question of title is not to be decided in suit for injunction. Further in that very suit, he has not referred that defendants have got no right, title or concern with the same. Such type of relief could not possibly be granted to him. Ld. ADJ acting as first Appellate Court had rightly set aside the judgment and decree passed by the trial Court, which were not sustainable. The impugned judgment and decree passed by Ld. ADJ, Tarn Taran do not suffer from any illegality or infirmity, which might have called for interference by this Court. Further no substantial question of law arises in this case. Therefore, finding no merit in the instant appeal the same stands dismissed.

14.10.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No