

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

RSA No.6045 of 2014
Decided on:15.05.2019

Raj Singh and anotherAppellants

versus

Bani Singh and othersRespondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.S.R.Hooda, Advocate,
for the appellants.

Mr.Ashwani Gaur, Advocate,
for the respondents.

DR.RAVI RANJAN, J. (Oral Judgment)

The plaintiffs-appellants have preferred this appeal assailing the Judgment and Decree dated 30.10.2014 passed by the Additional District Judge, Sonapat, in Civil Appeal No.19 of 2014, by virtue of which the appeal was dismissed by the First Appellate Court and the Judgment and Decree dated 29.04.2014 passed by the trial Court in Civil Suit No.1209 of 2011/2012, has been upheld.

1. Brief facts which are necessary to be taken into notice for consideration of the *lis*, stands enumerated as under:

The plaintiffs-appellants claimed in the plaint that a Dharamshala situated in village Kilorad, Tehsil and District Sonapat, fully described and detailed in the suit, is standing over the suit land. It is also stated that the land comprised in Khewat No.282, Khata No.353, rectangle and Killa No.36/25/1 measuring 1 Kanal and 12 Marlas, is also situated in the same village within the boundary of the aforesaid Dharamshala being part thereof. The plaintiffs averred that their father, v.i.z, Dharam Dass used

to reside in the Dharamshala and had spent huge money for its maintenance and repairs and also installed a tube-well, the expenses of which were borne out of his own pocket. It is further contended that after the death of the father, the plaintiffs came into the possession of the Dharamshala and the land attached with it and they are maintaining the same. It is also contended that *Samadhi* of the father of the plaintiffs is also existing in the area of Dharamshala. Further case in the plaint is that the plaintiffs and the defendants entered into a family settlement under which the management and ownership of Dharamshala was transferred in favour of the father of the plaintiffs. After the aforesaid arrangement, the defendants did not have any concern with the suit property but even then, due to wrong entries which are still continuing in the name of defendants to the extent of 2/3 share, they are showing themselves to be the co-sharers of the suit property. Despite requests of the plaintiffs, the defendants were adamant and refused to accede to the request of the plaintiffs to get the entries corrected. Since they were also threatening to take forcible possession of the suit property, the civil suit was filed for declaration that the suit land alongwith Dharamshala is owned and possessed by the plaintiffs and the defendants have no concern with that and also that the revenue entries standing in favour of the defendants to the extent of 2/3rd share are wrong, illegal and not binding upon the rights of the plaintiffs. Further, a decree of permanent injunction was also sought restraining the defendants from interfering in the peaceful possession of the plaintiffs over the suit property.

2. After receiving notice, the defendants appeared and filed their written statement raising diverse objections. It is averred in the written statement that the Dharamshala was constructed by Gulzari who was the

grand-father of the plaintiffs and the defendants and after his death, all of them would inherit as per the existing law of succession. It is further stated that the defendants have also incurred expenses in maintaining Dharamshala as co-sharers. The installation of tube-well over the suit property by the plaintiffs exclusively, has also been denied. The factum of oral family settlement having taken place in the year 1986 has also been denied and it is averred that the entries in the revenue record showing defendants to be owners-in-possession of 2/3rd share of the suit property is correct.

3. The trial Court, on the basis of pleadings of the parties, framed following issues:

1. Whether the plaintiff is entitled to a decree for declaration to the effect that the land mentioned in para no.2 of the plaint is the property land of Dharamshala which is owned and possessed by the plaintiffs and the defendants have no connection with the same and the revenue entries in favour of the defendants to the extent of 2/3rd share are wrong, illegal and not binding on the rights of the plaintiffs, as prayed for?OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff qua the suit land by taking any forcibly possession in any manner, as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has neither cause of action nor *locus standi* to file the present suit?OPD
5. Relief.

4. In order to substantiate his case, the plaintiff no.1-Raj Singh appeared and examined himself as PW1. Apart from that, several documentary evidences have also been brought on record by the plaintiffs, for example, certified copy of the order dated 16.09.1975 passed by AC Ist Grade in case No. 44 instituted on 07.08.1974 (Gram Panchayat vs. Gulzari) as Ex.P1, *Jamabandi* for the year 1976-77 and 1981-82 as Ex.P2 and Ex.P3,

respectively, *Aks Sijra* as Ex.P4, copy of the order dated 10.01.1985 passed by AC Ist Grade in case titled as 'Dharam Dass and others vs. Gram Panchayat and another' as Ex.P5, Mutation dated 20.06.1990 as Ex.P6, *Jamabandi* of the year 1991-92 as Ex.P7, certified copy of the Judgement and Decree passed in Civil Suit No.862 of 1992 decided on 16.09.1997 in case titled 'Dharam Dass vs. Gram Panchayat' as Ex.P8 and Ex.P9 respectively, *Jamabandi* of the year 2006-2007 as Ex.P10 and Ex.P11, certified copy of plaint filed in Civil Suit No.260/10 titled as 'Bani Singh and others vs. Raj Singh and others' as Ex.P12, certified copy of order dated 07.03.2013 passed in the aforesaid Civil Suit No.260/10 as Ex.P13.

The defendant-Bani Singh appeared and examined himself as DW1 but no other evidence was brought by the defendants.

5. The issue Nos.1 and 2, being intertwined, the trial Court considered them together and has come to the conclusion that the oral partition of the year 1986 could not be proved, thus, the family remained joint and the suit property having been acquired by grandfather of both the parties, after his death, became the joint family property and as such, the defendants are also co-sharers of the suit property. Therefore, no declaration entitling only the plaintiffs to be the owners-in-possession of the suit property can be passed.

The trial Court, while doing so, also took notice of the fact that though the plaintiffs have based their entire case on the Judgements and Decrees and pleadings in certain civil suits as discussed above, but no averment regarding earlier suits is there in the plaint and as such, they are guilty of concealment of relevant facts in the pleadings and no evidence beyond such pleadings can be looked into while deciding the case.

However, at the same time, the trial Court has also recorded that even if those civil suits are considered and the Judgement and Decree passed in the year 1997 in Civil Suit No.862 of 1992 (Dharam Dass vs. G.P.) is taken into consideration, the defendants not being party thereof, the same would not be binding upon them. That apart, that was a suit simpliciter seeking a decree of permanent injunction against the Gram Panchayat. The plaint of the suit does not disclose that there was any oral partition or settlement in the family in the year 1986. Accordingly, the suit was dismissed.

The Judgment and Decree of the trial Court was put to challenge before the First Appellate Court. However, the First Appellate Court also affirmed the findings recorded by the trial Court and dismissed the suit.

6. In the aforesaid background of the factual matrix, I have heard the parties and have perused the records of this Case.

Learned counsel for the appellants has assailed the Judgments and Decrees of the Courts below on diverse grounds. It is contended that the concurrent finding of both the Courts regarding evidence beyond pleadings and concealment of facts is against the spirit of the provision contained in Order VI rule 2 of the CPC as it discloses in clear term that the pleading should only contain a statement in concise form of the material facts on which the party pleading relies for the claim but not the evidence by which they are to be proved. *Prima facie* this limb of submission appears to be attractive but on deeper scrutiny, the same is found not tenable. Of course, there is no requirement for discussing or disclosing of the evidence which the concerned party is going to lead in the suit, in the pleading as per Order VI rule 2 of the CPC, but at the same time, the same provision

mandates in clear terms that a statement in a concise form of the material facts on which the party concerned relies, has to be disclosed in the pleading. Thus, in my considered view, the plaintiffs were mandatorily required to disclose that their father Dharam Dass had previously filed civil suit against Gram Panchayat in which he was declared as the owner in possession, but the same has not been done. It is only at the time of leading evidence that such stand has been taken in the oral evidence and the documentary evidence was also brought on record. Thus both the Courts have correctly placed reliance upon the decision of the Hon'ble Apex Court in **“Om Parkash vs. Desh Raj and others,” 2000 (1) CCC 1671**, and **“M/s J.P.Builders and another vs. Ramadas Rao and another,” 2011 (3) LJR 179**, as also the decision rendered in **“Mahanagar Telephone Nigam Limited vs. State of Maharashtra,” 2013(9) SCC 92**. In all the aforesaid decisions, Hon'ble Supreme Court has taken a view that, in the absence of any plea, no evidence would be admissible and, as such, no argument on that basis can be looked into because a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material facts which have bearing on the adjudication of the issues raised in the case.

7. So far the other issues are concerned certain facts are admitted, for example, the suit property was purchased by one Gulzari and who happened to be the grandfather of both the parties, being sons, widow and daughters of sons of Gulzari, namely, Dharam Dass, Pyare, Jai Bhagwan Singh, Maha Singh and Jai Pal. Thus, in the absence of any partition by metes and bounds in the family, the defendants would be entitled for 2/3rd share of suit property. However, the case of the plaintiffs is that there was

oral family settlement which took place on 01.01.1986 and by which the suit property was given to the father of the plaintiffs, namely, Dharam Dass as he was looking after the same and after his demise, the plaintiffs came in possession as owner of the property. In order to substantiate their case, the plaintiffs have placed reliance upon the Judgment and Decree dated 16.09.1997 in the Civil Suit No.862 of 1992 titled as “Dharam Dass vs. Gram Panchayat” (Ex.P8 and Ex.P9, respectively). It is contended on behalf of the plaintiffs that in the said suit, declaration was made to the effect that Dharam Dass was the owner of the property and the Gram Panchayat was permanently restrained from interfering into his possession and on that basis, *Jamabandi* was created. It is also contended that the defendants, v.i.z., Bani Singh and others instituted a Civil Suit No.260 of 2010 impleading plaintiffs-Raj Singh and others, for a declaration to the effect that the plaintiffs are joint owners-in-possession upto their respective shares in the concerned plot and also for passing a decree of permanent injunction restraining the defendants (plaintiffs herein) from raising any construction in the form of any wall and boundary wall on the plot in question upon the shares of the plaintiffs or to encroach upon the share of the plaintiffs. However, they subsequently withdrew the suit. The aforesaid suit being dismissed as withdrawn, it is contended that they are now not in a position to take a stand that they are co-sharers of the suit property. However, the aforesaid stand of the plaintiffs-appellants is also noted only to be rejected for the following reasons:

There always can be a partition by metes and bounds even orally. However, same has to be established before the Court of Law by the person making such claim as there is presumption of jointness in the Hindu

family governed by *Mitakshra* school. Both the Courts below have taken notice that though a claim has been made in the plaint that there is a family settlement but there is no specific pleading regarding the presence of the parties to the suit at the time of such settlement. That apart, the plaintiff-Raj Singh himself has admitted in his cross-examination that after such family settlement, he never went to *Patwari* for recording the family settlement. That apart, if such type of settlement would have been there, that should have been disclosed by father of the plaintiffs, Dharam Dass in the plaint of the Civil Suit No.862 of 1992 instituted by him against the Gram Panchayat for decree of permanent injunction but there is no whisper in the pleading regarding that. On the other hand, it is admitted fact in the plaint that revenue records are showing defendants to be the co-sharers upto the extent of 2/3rd share of the suit property. Even assuming for the time being that the family settlement took place, there is nothing in the plaint or evidence of plaintiffs disclosing as to what property actually the defendants got in such family settlement or partition. There can hardly be a partition of such a disproportionate nature that everything would go to the share of the plaintiffs but nothing would be given to the defendants. There is no whisper either in the plaint or the evidence of the plaintiffs as to what the defendants got in partition. The plaintiffs are talking about the family settlement regarding the suit property only which definitely indicates that it did not lead to partition by metes and bounds of the entire joint family property. Unless such partition is done by metes and bounds, though management of the property can be given to a co-parceners but the ownership cannot be transferred in favour of one co-parcener at the expense of others without showing the will of the co-parcener. There is no evidence on record

disclosing such will of the co-parceners/co-sharers. That apart, as noted above, the year 1997 suit was between Dharam Dass (father of the plaintiffs) and the Gram Panchayat. The defendants were not the party to the suit. Neither the factum of year 1986 oral partition was brought on record by the plaintiffs in that suit nor were the defendants impleaded as a party. Thus, the Judgment and Decree passed in the suit would never bind the defendants.

8. Much emphasis has been given by the plaintiffs-appellants to the Ex.P12 and Ex.P13, i.e., the plaint filed by the defendants against the plaintiffs of the suit for declaration of their share in the suit land and also for permanent injunction and the final order passed therein showing that the case was dismissed as withdrawn as the learned counsel appearing for the plaintiffs therein (defendants herein) had submitted that on instruction he does not want to pursue the suit and wants to withdraw the same. It is contended that once it is done, now they cannot say that they are co-parceners/co-sharers of the suit property. In my considered opinion, this limb of argument would also not be effective and beneficial for the appellants. Of course, the defendants withdrew their suit but it is well settled that partition is a recurrent cause of action unless and until there is final disruption in the joint family status by effecting partition by metes and bounds. That apart, it is not the defendants who have come in the suit for declaration rather the plaintiffs have come for the declaration that the suit property is their exclusive property but they miserably failed to establish any partition by metes and bounds in the family. However, there is implied admission on their part that the suit property was a joint family property until their father got it under the family settlement of the year 1986. Having

failed to establish any partition by metes and bounds, the presumption in Hindu Undivided Family governed by *Mitakshra* school being that the family is joint unless it is proved otherwise, in my considered view the appellants does not have a case.

In the result, this appeal, being devoid of any merit, fails and is, accordingly, dismissed. However, there would be no order as to cost.

Before parting with the matter, I must record that no other ground was raised by the parties save and except those which have already been considered and discussed as above.

May 15, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes