

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

RSA-4753-2017 (O&M)

Date of decision: 06.12.2019

Jat Senior Secondary School, Hisar and another

...Appellants

Versus

Cap. Hawa Singh

...Respondent

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

Present: Mr. Vivek Khatri, Advocate for the appellants.

Mr. Anurag Jain, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Col. Hawa Singh had filed a suit for mandatory injunction against defendant i.e. Jat Senior Secondary School, Jat College Road, near double Phatak (Railway Crossing), Hisar through its Principal, seeking issuance of direction to the defendant to get a shop constructed on its open land/plot measuring 70 sq. yards situated at Jat College Road, near double Phatak, Hisar fully detailed in the plaint and/or to allow the plaintiff to get constructed the shop at his expenses to be recovered from the defendant or to adjust the same in the rent, besides craving for grant of permanent injunction, restraining the defendant from raising any construction on the said open area except the shop to be given to the plaintiff.

As per version of the plaintiff, he is having LPG Gas Agency of Hindustan Petroleum Corporation since the year 1982 at Hisar, which

he is running under the name and style of M/s Sai Gas Service being its sole proprietor. The plaintiff is a senior citizen. He is sick and is totally confined to bed and for that reason, he has appointed his son Vikram Singh as his special attorney and his such attorney is well conversant with the facts of the case; the plaintiff had taken three shops having Nos. 26, 27 and 29 built on the area of 70 sq. yards on rent from the defendant about 28 years before filing of the suit. The plaintiff had been paying rent of those shops to the defendant regularly. The defendant wanted to get the shop vacated from the plaintiff, which it could not do legally, as such, it got a notice issued to the plaintiff from Municipal Committee, Hisar (for short 'MC, Hisar') and the letter threatened to demolish the shops. The plaintiff challenged the notice in Civil Court, Hisar, where a stay order was granted in favour of the plaintiff. During the trial, evidence of the plaintiff was completed and case was fixed for evidence of the defendants. The defendant could not lead any evidence and realizing that the suit was likely to be decreed, had offered and requested the plaintiff to compromise the matter. The plaintiff being a peaceful citizen and to avoid the litigation agreed to the proposal. Ultimately, a compromise was arrived at between the parties under which the defendant agreed to get a new shop constructed in place of old shops having size not less than 35 sq. yards. The compromise was reduced into writing as Ex.C1. In the said civil suit, statements of parties were recorded and suit was disposed of. The plaintiff had complied with terms & conditions of the compromise and vacated the shops, handing over the possession to the defendant. The

defendant demolished the shops and on the first floor of the three shops, Union Bank of India was tenant. The defendant got constructed a new building for the bank near the shops in question. The bank is now housed in newly constructed building as tenant under the defendant. However, the defendant did not get construct a shop for the plaintiff as compromised, despite repeated requests and demands and service of legal notice dated 11.12.2009 by the plaintiff upon the defendant. Feeling aggrieved, the plaintiff brought the suit in the Court.

On being put to notice, defendant No.1 appeared and filed written statement, contesting the suit, raising preliminary objections that the plaintiff did not have locus standi to file the suit; that no cause of action arose to the plaintiff to bring the suit; the suit was not maintainable etc. On merits, such defendant contended that Vikram Singh was not duly authorized and competent to file the suit and further shops in question were rented out to the plaintiff by Management of Jat Educational Institution. However, the plaintiff was not paying the rent regularly. The shops were in dilapidated condition and developed cracks in the walls and roofs and might have collapsed at any time. MC, Hisar after inspecting the shops, issued notices to the plaintiff on its own and not at the asking of defendant. The matter had been compromised and statements of defendant was got recorded, in which the defendant had stated that the shops shall be given to the plaintiff as and when those were constructed on the land in question; that the building in which Union Bank of India was shifted was already constructed by the Management of Jat Educational Institution. The bank was running on the

first floor of shop Nos.28 & 29 but the building was in dilapidated condition, so the bank had vacated that premises; that the construction can only be carried out by the Management because the defendant-school has no authority to raise construction over the land. The answering defendant prayed for dismissal of the suit.

The suit was originally filed against defendant No.1 but subsequently, on an application under Order 1 Rule 10 CPC, having been filed which was allowed, C.R.M. Jat College Road, near double phatak, Hisar through its President, was impleaded as defendant No.2. Defendant No.2 filed written statement, contesting the suit, raising various legal objections, contending that the compromise Ex.C1 in the previous suit could not be enforced by way of filing the present suit. The answering defendant was not party in the previous suit, in which compromise Ex.C1 had been entered into between the parties. Therefore, such defendant is not bound by such compromise. Furthermore, in compromise Ex.C1 in para No.1, it is specifically stated that when the shop shall be constructed, the same shall be given to the plaintiff and no time limit was fixed for that purpose. On merits, such defendant contended that the suit had not been filed by a duly authorized and competent person. In fact, the shops in question were in dilapidated condition and MC, Hisar after inspecting the shops had issued notices to the plaintiff of its own and not at the instance of defendant. This defendant also prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to the relief of mandatory

- injunction as prayed for? OPP.
2. Whether the defendant No.1 was authorized to enter into compromise Ex.C-1 in previous suit titled as Captan Hawa Singh Vs. M.C. Hisar and others decided on 04.04.2008 by the Court of Mrs. Narender Kaur, the then, Ld. Civil Judge (Jr. Divn.) Hisar? OPP.
 3. Whether the present suit can be filed by execution of decree dated 04.04.2008 in case titled as Capt. Hawa Singh Vs. M.C. Hisar and another by the Court of Mrs. Narender Kaur, the then, Ld. Civil Judge (Jr. Divn.) Hisar? OPP
 4. Whether the suit of plaintiff is not maintainable in the present form? OPD.
 5. Whether the plaintiff is having no locus standi or cause of action to file the present suit? OPD.
 6. Whether the suit is bad on account of misjoinder and non joinder of necessary parties? 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 examined Vikram Singh as PW-1, besides tendering various documents.

In rebuttal, defendants examined Santosh Kumari as DW-1 and thereafter, closed their evidence.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Hisar decided issues No.1 to 3 in favour of the plaintiff and against the defendants, issues No.4 to 6 were decided against the defendants being not pressed and vide judgment and decree dated

15.04.2014, the suit of the plaintiff was decreed and a decree for mandatory injunction was passed, directing the defendants to get the shop constructed on its open lands/plots as per compromise. It was further directed that defendants shall construct the shop within a period of one year from the date of judgment and if, they failed to provide freshly constructed shop within the stipulated period, then, the defendants would be liable to pay compensation to the plaintiff to be assessed on the basis of stipulated income of plaintiff from his gas agency from the date of judgment.

The defendants felt aggrieved by the said judgment and decree passed by the trial Court and had preferred an appeal before District Judge, Hisar, which was assigned to Addl. District Judge, Hisar, who vide judgment and decree dated 13.07.2017 dismissed the appeal, though, modified the relief granted by the trial Court to the extent that by adding over and above the relief that if defendants do not construct the shop in view of the impugned judgment, then, the plaintiff can get the same constructed by getting a Local Commissioner appointed from the trial Court and in that eventuality, the fee of Local Commissioner, expenses of construction and other incidental charges would be recoverable from the defendants.

Still feeling dissatisfied, the defendants have knocked at the door of this Court, by way of filing a Regular Second Appeal, notice of which was given to respondent/plaintiff, who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Both the Courts below have dealt with the matter in a very proper and appropriate manner. The trial Court while allowing the claim of the plaintiff has observed in para No.14 that it is admitted fact that compromise Ex.P5 was entered into between plaintiff Col. Hawa Singh and Jat Senior Secondary School, which was signed and executed by Vijay Singh, the then, Principal of Jat Senior Secondary School and that the plaintiff was having three shops bearing Nos.26, 27 & 29 situated at Jat College Road, Hisar and as a result of compromise, the plaintiff had left those shops. Dealing with the contentions raised on behalf of the defendants, since defendant No.2 was not a party to that compromise, therefore, the same is not binding upon it, the trial Court has observed that the defendants had admitted that Jat School and Jat College are one institution, having one management and in the earlier suit, Jat School was represented by its Principal and compromise Ex.C1 was signed by him, therefore, it cannot be said that defendants were not at all represented in the earlier suit and further from the facts and evidence on record, it is clear that defendant No.2 had knowledge of the compromise made in the earlier suit. There is nothing on record to show that any proceeding was initiated against the then Principal Sh. Vijay Singh, who had entered into compromise and even for the sake of argument, if it is presumed that defendant No.2 was not having knowledge of the compromise, then, the fact which cannot be ignored is that it was the Principal of Jat Senior

Secondary School, who had signed the compromise. There is nothing on record to show that Sh. Vijay Singh did so without any authority or that any action was taken against him by the management. As such, defendants No.1 & 2 are part of same institute and had knowledge of the compromise. Therefore, the same is binding upon them. Since, compromise has been entered into in the Court, it is part of judicial file. It is not the case of the defendants that compromise was result of fraud or mistake. The defendants had examined Smt. Santosh Kumari as DW1 who in her cross examination stated that Principal is in-charge of the school and Jat Senior Secondary School is owner of the shops in dispute. As regards the contention raised on behalf of the defendants that the proper remedy for the plaintiff was to file execution application for implementation of compromise Ex.C1 and not to file a separate suit, however, in the earlier suit, in view of the statement made by both the parties and compromise Ex.C1, the suit had been disposed of. No decree sheet was prepared in that suit. Therefore, no execution application could have been filed. The plaintiff had handed over the possession of shops, since the defendants had assured him to do fresh construction of shop for him, therefore, the plaintiff has every right to take legal action against the defendants. The compromise Ex.C1 is binding upon both the parties.

Learned Addl. District Judge, Hisar, while disposing of the appeal, has affirmed the findings recorded by the trial Court. The relevant paras of the judgment are reproduced for ready reference:-

“14. No doubt the compromise is entered in the civil suit are binding on the parties and if any party backs out

from the compromise then the opposite party can get the compromise enforced by filing the execution. However, it must be not lost sight of that compromise before the civil court create a legal liability. The legal liability can be enforced by filing a suit for mandatory injunction as is contemplated under section 39 of Specific Relief Act , which runs as under:-

39 Mandatory injunction – When , to prevent the breach of an obligation , it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

15. By entering into compromise, copy of which is Ex.P5, the rights and obligations were created between plaintiff and defendant no. 1 because as per the compromise the plaintiff has agreed to vacate (three shops measuring about 70 square yards) on the assurance that defendant no. 1 shall construct new shops on the land in question and the adjoining land thereto and shall let out a shop therein to the plaintiff.

*16. It is added here that for the enforcement of such legal obligation, it cannot be said that the suit for mandatory injunction could not have been filed. In support of my views reference can be made to **Bhagwan Kaur and another Vs. Chetan Singh and others** AIR 1988 Punjab and Haryana 198 and in the said citation will was found to be genuine and valid. Under the will a duty was cast on the defendants to provide all facilities for residence, food and clothing to the plaintiff. In order to prevent the defendants from breach of the said obligation of providing maintenance to the plaintiff and also to compel its performance, a mandatory decree under section 39 directing the defendants to pay maintenance regularly to the plaintiff was said to be*

the only proper and just relief which the plaintiff was entitled to in the suit. Only such like decree for mandatory injunction was held to compel the defendants for its performance as the same was executable under order 21 Rule 32 where it could be enforced by detention in the civil prison as well. Same principle would be applicable in our case.

17. Learned counsel for the appellants have raised the arguments that the entire property is the ownership of management who runs Jat School and College but in the earlier suit of injunction the management was not made the party. Only M.C.Hisar and defendant no.1 was the party. Since Management was the necessary party and in the absence of Management no effective compromise could take place. Therefore, compromise Ex.P5 (Ex.C1 in the suit for injunction) is of no consequences.

18. I am of the view that the said contention is meritless because in the earlier suit of injunction when defendant no.1 school filed written statement, copy of which is Ex.P12 on the file, then in para no.3 they took a stand that they are owner and landlord of the shops in dispute. They also admitted therein that the plaintiff was their tenant. I would also like to refer to the deposition of the defendants that has come in this case. In the cross examination DW1 Santosh Kumari, Principal of the school has clearly stated that the ownership of the shops is with their school and Incharge of the school is only the Principal. The aforesaid stand taken by the school and the evidence given by the Principal clearly clinches the issues i.e. the Incharge of the school where the shops were situated was the Principal. The property where the shops were situated was also the ownership of the school then learned trial Court has rightly repelled the contentions of learned counsel for the appellants that management has

noting to do in the matter, and, compromise Ex.C1 in the earlier suit of Permanent Injunction was validly entered. I must also add here that when entire ownership and the control over the land where the shops were situated was with defendant no.1 school then to say that the management is the owner of the property are the farce arguments. The management may be running the affairs of the school to some extent on the administrative side but in view of the own admission of the defendant school I have no hesitation in concluding that the shops and the land situated underneath it, was the ownership of the defendant no.1 school.

19. A legally enforceable right was created through compromise Ex.C1 entered in the previous suit between the plaintiff and defendant no. 1 school who was working under the auspices of defendant no. 2. Entering into this compromise has created a legal right in favour of the plaintiff and that legal right could equally be enforced by the plaintiff by filing suit for mandatory injunction.”

Learned counsel for the appellants had referred to judgment

Avtar Singh Vs. Kewal Singh @ Kanwal Singh and Ors., 2007(1) PLJ

508, by a Single Judge of this Court, wherein, it was observed that when a suit for declaration is filed to give effect to the compromise decree as no executable decree was passed in the previous suit, the plaintiff cannot seek enforcement of the said decree by filing a subsequent suit. This authority is not helpful to the appellant due to different facts and circumstances and the context in which such observations had been made.

Under the circumstances, I find that the appellants are bound by compromise Ex.C1, since the respondent/plaintiff had surrendered the

possession of three shops, which was in his possession as tenant, in the light of the compromise and such shops have been demolished. The appellants are under obligation to reconstruct the shop and give it to the respondent/plaintiff and in case of appellants refusing to do so, then, the plaintiff could get it constructed by getting a Local Commissioner appointed and recover the cost from defendants. This has been so directed by Ist Appellate Court. The judgments passed by the Courts below are well reasoned, based upon proper appraisal of evidence and correct interpretation of law. The same do not suffer from any illegality or infirmity. No substantial question of law arises. The appeal is found to be without merit and is dismissed accordingly.

06.12.2019

sumit.k

(H.S. MADAAN)
JUDGE

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