

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

RSA No.4789 of 2017 (O&M)
Date of decision:19.3.2019

Bhupinder Singh and others ... Appellants

Vs.

Preeti and others ... Respondents

RSA No.4439 of 2017 (O&M)

Preeti and another ... Appellants

Vs.

Bhupinder Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunny K. Singla, Advocate
for the appellants in RSA No.4789 of 2017.

Mr. Arihant Jain, Advocate with
Mr. Varun Jain, Advocate
for the appellants in RSA No.4439 of 2017.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two regular second appeals bearing Nos.4789 at the instance of the plaintiffs and 4439 of 2017 at the instance of the defendants qua the findings of the Lower Appellate Court.

“The question which arises is whether the Lower Appellate Court by relying upon the additional evidence declared the sale deeds challenged by the plaintiffs in representative capacity to be null and void without incorporating the finding

in decree?

In order to answer the aforementioned question, it would be relevant to refer few facts:-

The appellant-plaintiffs six in number by invoking the provisions of Order 1 Rule 8 of Code of Civil Procedure sought the invocation of the Civil Court claiming the following relief:-

“A. Suit for decree of permanent injunction restraining the defendants from encroaching upon and amalgamating the Govt. space/street in their property forcibly and illegally shown in red colour in the site plan and from raising any sort of construction over the same illegally and from causing any sort of obstruction in the use of the street in dispute by the plaintiffs and other inhabitants of the Mohalla;

B) Suit for a decree of declaration declaring the sale deed no.1249 dated 16.6.2011 illegally executed by Kulwant Kaur wife of Harbans Singh in favour of defendant no.1 regarding the suit property by mentioning the boundaries and the sale deed no.3893 dated 18.1.2005 executed by Balwant Singh, Rachhpal Singh etc in favour of Kulwant Kaur wife of Harbans Singh defendant no.3 to be illegal, null and void and are liable to be set aside;

C) Suit for a decree of mandatory direction directing the defendants no.1 and 2 to remove the construction illegally raised by them in the suit property.”

on the premise that defendants had not only encroached but amalgamated the Government space/street forcibly and illegally and sought the injunction for raising any sort of construction by assailing the sale deeds.

It was alleged that one Ramji Dass son of Gobind Ram was owner of the property situated towards Eastern side of the street in dispute, who sold the property to Des Raj and on the site plan, it was clearly shown to be Government street. Des Raj further sold it to Puneet Garg and Madhu Bala, who further sold the same to Sanjiv Kumar and Preeti (defendants No.2 and 1).

The suit property was shown to be Government street in all the site plans attached to the sale deeds and also in Southern side of the street in dispute, the house of Krishana Devi was situated and in the site plan attached to the sale deed vide which her property was purchased by Krishna Devi, the street in dispute has also been shown to be Government street. The defendants were requested number of times not to encroach upon the Government street and not to amalgamate the same, they flatly refused to do so, thus, cause of action arose to file the suit.

It was alleged that previously one Subhash Chand filed a civil suit no.1053 of 1993 titled as 'Subhash Chand vs. Balwant Singh and others' decided on 18.7.2001, wherein, it was held that Balwant Singh and others were neither the owners nor in possession of the suit property. Even Devki Devi and other also filed a civil suit no.187 of 1978 titled as 'Devki Devi and others vs. Surinder Kumar and others' decided on 15.4.1981. Balwant Singh and Harbhajan Singh have failed to prove their ownership. The sale

deed dated 18.1.2005 of Balwant Singh in favour of Kulwant Kuar was also illegal, null and void. Since Kulwant Kaur executed a sale deed in favour of defendant No.1, the same was also without jurisdiction and illegal.

The defendants opposed the suit and raised preliminary objection by relying upon the order dated 2.9.1976 of Sub Divisional Officer (Civil), Malerkotla and order dated 9.1.2007 of the Collector (SDM) Dhuri to the fact that subject matter of the suit land was not Government property and claimed themselves to be owners by virtue of the sale deed dated 14.6.2011 having purchased the land for a valuable consideration from Kulwant Kaur who had registered sale deed dated 18.1.2005. It was also explained that Ramji Dass was owner of the property which fact was clear from the map dated 29.10.1955 which shows the street starting from “50 road” to “Chakki Wali Road”.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to declaration as prayed for?OPP
2. If so, whether plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether suit property is Government space or public street as alleged?OPP
4. Whether plaintiff is entitled for mandatory injunction as prayed for?OPP
5. Whether the suit of the plaintiff is not maintainable?OPD

6. Whether the plaintiff has not come to the Court with clean hands?OPD

7. Relief.”

The plaintiffs in support of their case examined nine witnesses and brought on record the documents spanning from Ex.P1 to Ex.P18 alongwith Mark A to Mark D. On the other hand, defendants examined seven witnesses and brought on record the documentary evidence i.e. Ex.D1 to Ex.D23 alongwith Mark Q.

The trial Court after noticing the evidence on record found that suit property was not owned by nagar council and it was not the Government property. The sale deed brought on record by the plaintiffs did not bestow the status of Government property and also held that the plaintiffs have no locus standi to challenge the same, if at all, it was the Government property.

The plaintiffs assailed the aforementioned finding by filing an appeal and during the pendency of the appeal also filed an application under Order 41 Rule 27 CPC for placing on record the copies of judgment and decree dated 20.08.2002 by way of additional evidence but by relying upon the aforementioned finding held that defendants were not owners of the suit property but dismissed the appeal. It is in these circumstances, qua the findings aforementioned, impugned, defendants have assailed the same for expunging by filing RSA No.4439 of 2017 whereas RSA No.4789 of 2017 on behalf of the plaintiffs.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the appellants submitted that in a civil suit no.1053 of 1993, Ex.P23, once Subhash Chand had sought the injunction against Balwant Singh and Harbhajan Singh restraining them from interfering in any manner of the portion i.e. street shown red in the site plan wherein defendants alleged themselves to be owners, following issues were framed:-

- “1. Whether the site in dispute as shown in red colour in the site plan is a street?OPP*
- 2. Whether the plaintiff is entitled to relief of jurisdiction as prayed for?OPP*
- 3. Whether the plaintiff has got no locus standi to file the present suit?OPD*
- 4. Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD*
- 5. Whether the suit is barred by the principles of res judicata?OPD*
- 6. Relief.”*

While dismissing the suit, the trial Court held that defendants were not owners of the property. Two appeals were filed. One filed by plaintiff and other one by defendants and both the appeals were dismissed. It is in these circumstances, by taking into consideration the additional evidence, the findings came to be passed. The appeal could not have been dismissed, therefore, there is abdication.

Mr. Arihant Jain, learned counsel for the defendants submitted that there was no occasion for the Lower Appellate Court to give the findings in the absence of any decree. It is the decree which is executable and not the findings. The plaintiffs did not have the locus standi to assail the title of the property in representative capacity and the jurisdiction of the trial Court is ousted. The findings of the trial Court tantamount to exercising the powers under Article 226 of Constitution of India which is beyond the scope. Even assuming for an argument sake, it was observed that Subhash Chand and Harbhajan Singh were not the owners, there was no occasion for reiterating the findings when the sale deed are of the subsequent period.

I have heard the learned counsels for the parties, appraised the judgments and decrees of the Courts below and of the view that following substantial questions of law arise for adjudication of the present appeals:-

- “1. Whether the Lower Appellate Court could give the findings by setting aside the sale deeds without incorporating the decree and said to be perverse?
2. Whether in injunction suit in the absence of any issue, the Court could mould the relief in holding the defendants to be not owners and incorporate the relief in decree?

The Lower Appellate Court while dismissing the appeal of the plaintiffs has not assigned any independent reasons except by relying upon the judgment and decree gave the impugned findings in paragraphs 29 and 31 as under:-

29. During the evidence, led by the respondent-defendants,

read with testimony of Preeti, DW1, it is claimed by the respondents-defendants, that there has been a sale deed no.3893 dated 18.01.2005 Ex.D-9 executed by Balwant Singh etc in favour of Smt. Kulwant Kaur wherein Kulwant Kaur was mentioned the owner in possession the site in dispute. Then, by sale deed dated 16.6.2011 Ex.D4 she purchased the aforesaid plot from him for consideration of Rs.1,20,000/- from Kulwant Kaur. But, as observed above, in Ex.AP-1 and Ex.AP-2, it has already been held by the Civil Court, upheld by the Court of learned Additional District Judge, that Balwant Singh and Harbhajan Singh have no legal right qua ownership and possession of the said site and therefore, the above said sale deed are nullity in the eyes of law. Even the site plan earlier sanctioned by the Municipal Council, Dhuri was cancelled subsequently.

31. Thus, on the basis of evidence on record, in this appeal, this Court has arrived at the conclusion that the sale deed no.3893 dated 18.1.2005, executed by Balwant Singh, Rachhpal Singh etc in favour of Kulwant Kaur, wife of Harbans Singh, defendant no.3 is an illegal null and void document. Similarly, the sale deed no.1249 dated 16.06.2011, executed by Kulwant Kaur wife of Harbans Singh in favour of Preeti wife of Surinderpal, defendant no.1 regarding the suit property is also illegal, null and void.”

On perusal of issues framed in the civil suit of 1993, resulting into judgment and decree, Ex.P23 it is evident that there was no issue of title and while rendering the finding on issue no.1, it was held as under:-

“With my above detailed discussion and observations, it is held that site in dispute is neither a part of the street nor the same in any manner is ownership/possession of the defendants thereover. Issue no.1 is accordingly decided against the plaintiff.

Issue No.2. This issue is reproduced below for the sake of convenience in order to avoid wastage of time by reverting the pages thereover. The issues have been typed:-

“Whether the plaintiff is entitled to relief of injunction as prayed for?OPP.

Once the finding on issue no.1 was rendered against the plaintiffs, the trial Court could not have granted such relief which reads thus:-

“In view of the premises written above, in view of failure of the plaintiff on issues no.1 and 2 specifically suit of the plaintiff fails and as such is dismissed by also holding that the defendants are also not owners in any established possession over the site in dispute. No order as to costs. Decree sheet be prepared accordingly. File be completed and consigned to judicial record room.

Pronounced in open Court.”

The findings in the previous suit rendered on issue no.1 were based upon the oral evidence and examination of some site plan. The site plan would not be a ground for defining the ownership of the defendants. The provisions of Order 1 Rule 8 CPC envisaged the accrual of the cause of action to one person or all for seeking permission of the Court for espousing the cause of the residents but under that garb personal right of the defendants in the absence of title, the plaintiffs would not have any locus standi. At the best, they could have impleaded the State Govt. alleging it to be owner. However, no effort was made despite the fact that objection was taken that suit was bad for mis-joinder and non-joinder of the parties.

The Lower Appellate Court also failed to notice that it could not enlarge the scope of the suit in appeal without pondering upon the point of determination. Whatever the finding had already been arrived at in the previous suit, could not have reiterated without impleading the effected parties. The defendants in the present present suit derived the title on the basis of other sale deeds as referred to in the written statement. It is not a case that plaintiffs did not know about the details of the evidence which had categorically been pleadings of the respective parties but yet did not make any effort to implead them.

The maxim “*actus curiae neminem gravabit*” envisage the act of the Court would prejudice none and would squarely apply in the present case.

The cumulative observations of mine leads to irresistible conclusion that the Lower Appellate Court exceeded its jurisdiction in

setting aside the sale deeds in the absence of any assailment by the original owners. The said findings, in my view, are not sustainable and the same are hereby expunged as the plaintiffs have not been able to establish the locus. The substantial questions of law are thus answered in the manner above.

As an upshot of my findings, arguments of Mr. Singla have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below.

Resultantly, regular second appeal no.4789 is dismissed. Consequently, regular second appeal no.4439 of 2017 is allowed to the aforementioned extent.

(AMIT RAWAL)

JUDGE

March 19, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No