

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.6008 of 2017 (O&M)
Date of Decision.14.03.2019

Dhan Singh

...Appellant

Vs

Umrao Singh (deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.3B is in regular second appeal against the concurrent finding whereby suit of the respondent-plaintiff claiming following relief has been decreed by the trial Court and affirmed in appeal:-

“A. That decree for declaration to the effect that plaintiffs are owner in possession over the suit land as mentioned in para No.1 of the plaint to the extent of 2/9th share and like this defendants No.1 to 4 and proforma defendants No.5 to 7 are also owner in possession of remaining 7/9th share and like this they are entitled to enter their names in the column of ownership in the revenue record and mutation No.567 is absolutely wrong and against the law and against the facts and is illegal and null and void and is not binding on the plaintiffs and proforma defendants, be passed in

favour of the plaintiffs and defendants No.5 to 7 against the defendants No.1 to 4 with costs.

B. That decree for permanent injunction be passed to the effect that defendants No.1 to 4 be restrained not to alienate, mortgage and sale of their share 4/9th and they also be restrained not to raise the construction and to change the nature of property without partition and they be also restrained not to interfere in the use of well, in favour of plaintiffs and proforma defendants against the defendants No.1 to 4 be passed with costs.

C. That if during the trial of this suit defendants No.1 to 4 succeed in taking the possession more than their share and they succeed in changing the nature of the suit land in that condition mandatory decree be passed with direction to demolish the construction and to change the nature as it was at the time of filing the suit, be passed in favour of the plaintiff and proforma defendants and against the defendants No.1 to 4 with costs.”

The plaintiff claimed the aforementioned declaration on the basis of the decree amongst the parties dated 23.07.1999 wherein parties to the *lis* were declared owners in possession of the suit property. The aforementioned Killa No.26/18/2 shown in red colour marked by letters ABCD. It was averred that Mutation bearing No.567 was sanctioned. As per the decree, 2/9th share was not given to the plaintiff in the suit property instead was given 1/6th share and

the plaintiff and proforma defendant in fact had 3/9th share in the suit property. Despite repeated requests, mutation was not corrected and therefore, suit was filed.

Defendant opposed the suit by raising objection qua maintainability of the suit under the provisions of Section 11 of the Code of Civil Procedure i.e. doctrine akin to *res judicata* nor admitted possession of the plaintiff or signatory of any writing dated 14.01.1963 subject matter of appeal.

Plaintiff in support of evidence examined six witnesses and brought on record following documents:-

*“Ex.PX Certified copy of judgment dated
23.07.1999.*

*Ex.PY Certified copy of decree sheet dated
23.07.1999.*

Ex.PW5/1 Copy of site plan dated 23.07.1999.

Ex.P2 Copy of replication dated 12.8.1992.

*Mark A Certified copy of jamabandi for the year
2003-04.*

Ex.P1 Urdu writing.

Ex.P1/T Hindi Translation

Ex.PW6/B Certified copy of plaint.”

Whereas defendant examined Dhan Singh as DW1 and Dharam Singh son of Sohan Lal and brought on record documents Ex.DW1/1, DW1/2 and Ex.D1 to D7.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant submitted that shares of plaintiff and proforma defendant were not disputed in the previous suit as the present suit was not maintainable as the relief was sought beyond decree dated

23.07.1999. Both the Courts below have erred by arriving on conclusion that plaintiffs were entitled to 1/9th share i.e. total 2/9th in the suit property. As per the admission of the plaintiff, out of the suit property defendants No.1 to 4, 3(a) to 3 (e), F (1) to F(3) have already sold their to one Santosh Devi prior to the filing of the suit. Plaintiffs filed an application for impleadment under Order 1 Rule 10 CPC but the same was dismissed as withdrawn. It is admitted fact that third party rights had been created but no effort was made to implead the subsequent purchaser being necessary party. The suit was also barred by law of limitation as the mutation bearing No.567 was sanctioned in the year 2003 and the dispute with regard to mutation was decided on 14.12.2005 whereas the suit was filed on 07.03.2009. All these factors have not been looked into correct perspective, therefore, there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. It would be apt to reproduce relevant portion of the relief clause subject matter of the decree dated 23.07.1999 and the same reads as under:-

“Relief.

11. In view of my discussion on the aforesaid issues, the suit of the plaintiffs and pro forma defendants is hereby decreed with costs. The plaintiffs and proforma defendants are declared owners in possession over the suit property bearing Killa No.26/18/2 and the same has been shown in red colour and marked by letters A,B,C,D in the plan attached with the plaint. Decree sheet be

prepared accordingly and file be consigned to the records.

Announced.

Sd/- 23.7.99

Dated 23.7.1999

Civil Judge (Sr. Division)

Rewari. 23.7.1999.”

It only accorded ownership to the plaintiffs and pro forma defendants. It is matter of record that in previous suit, few of the defendants were plaintiffs. Once the mutation was not in accordance with determination of share, gave cause to the plaintiff to file the suit, therefore, it was not hit by doctrine akin to *res judicata*. The instant suit was based on different cause of action after the decision in the disputed mutation given in the year 2005. There is no limitation qua the claim made on the basis of title. The cause of action would only arise when the title or the possession is disturbed or disputed by other side. Non impleadment of Santosh Devi would not be fatal in this case as they stepped into the shoe of vendors i.e. defendants. Both the parties to the *lis* were already declared owners and the decree had binding effect.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No