

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6309 of 2017 (O&M)

Date of Decision: February 13, 2019

Sarwan & others

...Appellant

Versus

Babu (now deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sandeep K. Sharma, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.16433-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 35 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6309 of 2017

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby the suit of the appellant-plaintiffs for possession and permanent injunction filed in 2003, has been dismissed by the courts below.

It is a classical case where the plaintiffs having lost upto Hon'ble the Supreme Court in a previous round of litigation, i.e., in Civil Suit No.51 of 1988 where the question of title in injunction suit was decided against them, chose to file the suit, but the courts below, while dismissing

the suit, did not impose the costs.

A person cannot be permitted to repeatedly invoke the jurisdiction under Section 9 of the CPC to re-ignite the litigation once having been extinguished in Civil Suit No.51 of 1988. The injunction was sought against the defendants herein from interfering into peaceful possession over land measuring 4 kanals 17 marlas, comprised in Khasra Nos.18//19/2 (2-13), 23/1 (0-8), 18//22/1 (1-16), situated in Village Garha, Tehsil and District Jalandhar, wherein the defendants herein and therein laid reliance of the order dated 19.06.1980 by which the mutation of inheritance after the death of Fakira was finally settled in their favour.

The trial Court, on the basis of the aforementioned pleadings in the previous suit, framed the following issues:-

- “1) Whether the plaintiffs are owners in possession of the land in dispute? OPP*
- 2) Whether the defendants have purchased part of the property? OPD*
- 3) Whether the suit is bad for non-joinder of the parties? OPD*
- 4) Whether the plaintiff is estopped by his acts and conduct from filing this suit? OPD*
- 5) Whether the plaintiff has no locus standi? OPD*
- 6) Whether the suit is time barred? OPD*
- 7) Relief.*

The following additional issues were framed on 05.02.1996:-

- 6-A Whether the suit is liable to be stayed in view of preliminary objection no.6 taken by the defendants in the written statement? OPD*
- 6-B Whether the suit is liable to be dismissed in view of preliminary objection no.11 taken by the defendants? OPD*
- 7. Relief.”*

It is a matter of record that the said suit was dismissed on 14.11.1996 vide judgment Ex.DY and decree-sheet Ex.DZ and ultimately the aforementioned judgment was upheld by this Court in Regular Second Appeal No.2416 of 1998 vide order dated 29.05.2000 (Ex.D4) and finally in Special Leave Petition by Hon'ble the Supreme Court. Once the defendants had already set up the title by virtue of the mutation which though does not confer title, but there is adjudication of ownership in a suit for injunction. A person cannot be permitted to re-agitate the issue under Explanations 1 and 8 of Section 11 of the Civil Procedure Code couching the suit claiming possession and injunction without any declaration, which indirectly, was sought. The trial Court and Lower Appellate Court, by relying upon the judgments, dismissed the suit and the appeal.

Mr. Sandeep K. Sharma, learned counsel appearing on behalf of the appellant-plaintiffs made an attempt to apprise this Court that an effort was made before the courts below to supply copy of the order dated 19.06.1980 vide which the mutation of inheritance of Fakira was sanctioned in favour of the defendants which had not seen the light of the day, though it was placed on record in the plaint and, therefore, the courts below had erroneously drew an adverse inference. The revenue record upto 1949 established the ownership of Babu son of Fakira as there was no dispute with regard to the parentage of the plaintiff and in such circumstances, the evidence, as per the provisions of Section 50 of the Indian Evidence Act, was not required to be led and, thus, urged this Court for setting-aside the findings under challenge.

I am afraid, the aforementioned arguments are not sustainable as from the perusal of the issues, it revealed that it was only the question of

injunction but the ownership was already determined in the previous litigation reached upto Hon'ble the Supreme Court. Explanations 1 and 8 of Section 11 and as well as Section 33 of the Indian Evidence Act enable the Court to look into the previous proceedings and take into evidence and barring party to claim same relief.

In view of what has been observed above, I am of the view that the plaintiff did not honour the previous litigation as noticed above by seeking declaration of mutation which has already been upheld in the previous round of litigation. It was a second attempt to overreach the court.

For the reasons mentioned above, the judgments and decrees of the courts below cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed with costs of ₹ 10,000/- to be paid to the contesting defendants. In case of non-compliance, liberty is granted to the defendants to move an appropriate application.

Let this order be communicated to the trial court for implementation of the order.

February 13, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No