

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 99 of 2018 (O&M)

Date of Decision: 31.05.2019

Paramjit Kaur

...Appellant

VERSUS

Joginder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Vaibhav Sehgal, Advocate
for the appellant.

Mr. Prateek Mahajan, Advocate
for the respondents.

SURINDER GUPTA, J.

Appellant-Paramjit Kaur filed suit seeking declaration and relief of injunction as follows:-

“Suit for declaration to the effect that the plaintiff is owner in possession of plot measuring 6-2/3 marlas i.e. 200 sq. yards, comprised in khasra no. 33//8/3, 9/2, 12, 564, 223, 434, 435, khata no. 133/166, 135/168, 155/195, as per jamabandi for the year 1993-94, situated at village Jawaddi, Tehsil and District Ludhiana, as shown red in the site plan attached and bounded as under:-

East : Manjit Singh : 60'

West : Ranjit Singh : 60'

North : Neighbourer : 30'

South : Street : 30'

And

for permanent injunction restraining the defendants

themselves, their employees, attorneys, agents, relations, assignees etc. from interfering in the peaceful possession of the plaintiff and further from dispossessing the plaintiff illegally and forcibly from the suit property as shown red in the site plan attached and further restraining the defendants from alienating the suit property in any way, illegally and forcibly, without any right and jurisdiction on the basis of oral and documentary evidence.”

2. The suit was decreed and plaintiff was declared owner in possession of suit property and defendants were restrained from interfering in her peaceful possession and from dispossessing her except in due course of law.

3. Defendants filed appeal before Additional District Judge, Ludhiana. During pendency of appeal, application was moved under Order XLI Rule 27 CPC for permission to lead additional evidence to place on record copies of *jamabandies* for the years 1978-79, 1993-94, 1998-99, 2008-09 of Village Jawaddi, copy of order passed by Collector, Ludhiana, copy of mutation no. 23200 of Village Jawaddi, certified copies of some statements and orders passed by Court. Application was allowed by learned Ist Appellate Court with observations as follows:-

“13. After hearing the respective contentions of both the sides I find merits in the present application for leading additional evidence. By way of present application, appellant intends to produce certified copies of Court proceedings which are per se admissible. Therefore, same cannot be denied to be tendered into evidence. The

jamabandi for the year 1978-79, 1993-94, 1998-99 2008-09 of village Jawaddi, Ludhiana are also public record. It is settled law that any document, which is essential for the just decision of case, can be taken in evidence even at appellate stage. The courts should normally be receptive to whatever evidence is produced before it, if the same is found essential for doing substantial justice between the parties. Consequently, present application filed by the appellant is allowed.”

4. Learned Ist Appellate Court observed that learned lower Court has not looked into following pleas raised by defendants-respondents in their written statement while framing issues:-

- (i) Gurnam Singh has already executed sale deed of 500 sq. yards bearing wasika No.24736 dated 04.02.1997 in favour of Kuldeep Singh, which was land more than his share, as such, he could not execute any sale deed in favour of Balwinder Kaur.
- (ii) Plaintiff is not in possession of suit property and her suit is hit by provisions of Section 34 of Specific Relief Act, as no relief of possession has been sought by her.
- (iii) Ranjit Singh, who filed suit as attorney of plaintiff, has no authority to file the suit, as such, the suit is bad for misjoinder and non-joinder of parties.
- (iv) Plaintiff had earlier filed suit claiming her ownership over 175 sq. yards of land while in present suit, she claimed her ownership over 200 sq. yards and her suit is

barred under Order II Rule 2 CPC.

5. Learned Ist Appellate Court framed following additional issues:-

6-A) Whether the suit filed by plaintiff is barred under Order 2 Rule 2 CPC in view of filing of earlier suit by her? OPD

6-B) Whether Gurnam Singh was owner of any land at the time of execution of sale deed bearing wasika No.17643 dated 17.11.1997 in favour of Balwinder Kaur on account of execution of sale deed bearing wasika No.24736 dated 04.02.1997 for land measuring 500 sq. yards by Gurnam Singh in favour of Kuldeep Singh? OPD

6-C) Whether the suit is bad for non-joinder and mis-joinder of parties? OPD

6-D) Whether sale deed bearing wasika No.21347 dated 07.01.1998 in favour of plaintiff Paramjit Kaur is a sham transaction? OPD

6-E) Whether the plaintiff is in actual possession of suit property? OPP

6-F) Whether the suit is barred under Section 34 of the Specific Relief Act? OPD

6-G) Whether Ranjit Singh has no authority to file the present suit? OPD

6-H) What is the effect of judgment and decree dated 16.04.1993 as well as compromise effected before the

Hon'ble High Court, on the facts of present case? OPD

6. The appeal was partly allowed and the case was remanded to learned trial Court with direction to decide it afresh after giving reasonable opportunities to both the parties to lead evidence on additional issues and also additional evidence permitted to be produced.

7. On the issue of permission to lead additional evidence, learned counsel for the appellant has no objection to order passed by learned Ist Appellate Court. He has, however, argued that on allowing of additional evidence, learned lower Appellate Court has to proceed as per provisions of Order XLI Rule 28 CPC. Learned lower Appellate Court proceeded to frame additional issues without application of mind and going through judgment of learned trial Court, wherein all the points, which form basis for framing additional issues, have been discussed. There was, as such, no reason or occasion for learned Ist Appellate Court to frame additional issue and even if an additional issue is found necessary and framed, it has to follow the procedure prescribed under Order XLI Rule 25 CPC instead of remanding the case for fresh trial.

8. Learned counsel for the respondents has argued that additional issues framed by learned lower Appellate Court were material issues and without recording findings on these issues the matter in dispute could not be properly and judiciously decided. Findings on these issues will go to root of the case, as such, learned Ist Appellate Court has rightly remanded the case for fresh decision after recording of evidence of parties on these issues.

9. Issues framed by learned trial Court are as follows:-

1. Whether plaintiff is entitled to the decree for declaration

as prayed for? OPP

2. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for? OPP
3. Whether the suit of plaintiff is not maintainable? OPD
4. Whether the plaintiff has not come to the court with clean hands? OPD
5. Whether no cause of action accrued to the plaintiff to file the suit? OPD
6. Whether the plaintiff has not paid the proper court fee?
OPD
7. Relief.

10. While recording findings on issues no. 1 and 2, learned trial Court observed that Gurnam Singh was owner of 1/3rd share in the land situated in village Jawaddi. He sold 2 *kanals* 8½ *marlas* of land out of his share vide sale deed dated 07.11.1997 in favour of Balwinder Kaur, who sold some of her share in favour of Paramjit Kaur. In the appeal pending before this Court, a compromise was effected between the defendants and legal heirs of Gurnam Singh but this compromise did not effect the sale deed executed in favour of Balwinder Kaur and Paramjit Kaur. Mutation entered on the basis of that compromise did not confer any title on parties as defendants have never challenged sale deed dated 07.01.1998 executed by Balwinder Kaur. She was also not given any notice of the compromise entered between LRs of Gurnam Singh and defendants. *Qua* sale deed executed by Gurnam Singh in favour of Balwinder Kaur and by Balwinder Kaur in favour of Paramjit Kaur, it was observed by learned trial Court as follows:-

“.....Further more defendants have never filed any suit to challenge the sale deeds of Balwinder Kaur and Paramjit Kaur. So I am of the view that the sale deed dated 07.01.1998 confers title upon the plaintiff Paramjit Kaur, even though LRs of Gurnam Singh had entered in to compromise with LRs of Karnail Singh i.e. defendants before the Hon'ble High Court, and subsequently the share of Gurnam Singh was reduced to 1/6th from 1/3rd as mentioned in the Jamabandi of year 1993-94. So I am of the view that 1/3rd share was conferred upon Gurnam Singh on the basis of decree of year 1993 and on the basis of that decree he had become owner to the extent of 1/3^d share of suit land situated at village Jawaddi and out of that 1/3rd share he had sold 2 kanals 8 ½ marlas share to Balwinder Kaur through sale deed dated 17.11.1997 and subsequently Balwinder Kaur sold 6-2/3 marlas share (200 sq. yards) to plaintiff Paramjit Kaur through sale deed dated 07.01.1998. So I am of the view that sale deed duly confers title upon plaintiff as it is never set aside by any competent authority.....”

11. Suit of plaintiff was held as maintainable. From the findings it is apparent that learned trial Court has already recorded findings on point in dispute forming basis of issues no. 6-B, 6-D, 6-E and 6-F. The suit was filed by Ranjit Singh in his capacity as attorney of appellant and in case his authority is not proved, learned Ist Appellate Court was all competent to record the finding to this effect. Learned trial Court has also discussed the effect of judgment and decree dated 16.04.1993 and the compromise

between defendants and legal heirs of Gurnam Singh.

12. It is a well settled law that when parties are aware of the dispute and have lead evidence in support of their contentions, non-framing of issues is not a material fact. In this case all the aspects, on which additional issues were framed, have already been dealt with including aspect of bar of suit under Order II Rule 2 CPC, as the issue regarding maintainability of suit was also decided against the defendants.

13. In view of above facts, I am of the opinion that order of learned Ist Appellate Court framing additional issues is not tenable and is liable to be set aside. Even otherwise, if learned Ist Appellate Court found necessity to frame any additional issue, it has to proceed further as per provision contained in Order XLI Rule 25 CPC instead of remanding the case with direction to learned trial Court to decide the same afresh. Learned Ist Appellate Court has committed grave error while proceedings with case in a casual manner without taking note of the fact that learned trial Court has dealt with all the issues raised in the suit.

14. As a sequel of my above discussion, this appeal is partly allowed in following terms:-

- (i) Order of learned Ist Appellate Court allowing application of respondents under Order XLI Rule 27 CPC is upheld.
- (ii) Learned Ist Appellate Court will proceed further to record additional evidence as per provisions of Order XLI Rule 28 CPC.
- (iii) Order of learned Ist Appellate Court framing additional issues and remanding the case to learned trial Court for

fresh decision is set aside.

15. Parties are directed to appear before learned Ist Appellate Court/successor Court on 15.07.2019, on which date appeal file shall be taken on board and proceeded further to dispose of the same as per above observations. It is, however, made clear that any observation in this order shall not be construed as expression of opinion on merit of any aspect of the case.

May 31, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***