

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

RSA No.639 of 1992

Date of decision: 6th March, 2020

Chander & others

... Appellants

Versus

Ramautar & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjay Mittal, Advocate for the appellants.

Mr. Sandeep K. Yadav, Advocate for respondent No.1.

FATEH DEEP SINGH, J.

This is an appeal by the appellants Chander, Matadin (now being represented by his LRs), Hoshiar Singh and Ramautar son of Raghunath (then plaintiffs) against Ramautar son of Ghisa Ram and others (then defendants) challenging judgment and decree dated 13.01.1992 of the Court of learned Additional District Judge, Narnaul whereby the appeal of Ramautar son of Ghisa Ram stood allowed thereby setting aside judgment and decree dated 01.08.1989 passed by the trial Court of learned Sub Judge 2nd Class, Mahendergarh.

The brief background of the case is that Raghunath and others including Matadin filed against Ramautar and others a suit for permanent injunction claiming that the plaintiffs are owners in possession

of the Ahata and house detailed in the plaint being co-sharers and alleging that the defendants wanted to take forcible possession of the same and raise construction compelling them to file the suit.

Defendants in their stand took the plea as to the maintainability of the suit and the fact that defendant No.1 Ramautar had purchased the suit land through registered sale deed dated 23.08.1983 for a valuable consideration of ₹ 4,000/- from defendants No.4 to 9 who are successors of Jangi Ram and Khemu sons of Rura and has secured its possession. The trial Court framed the following issues:-

1. Whether plaintiffs are owners in possession of the property in question as alleged in the plaint? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether suit of plaintiff is not properly valued for the purpose of Court fee and jurisdiction? OPD
4. Whether plaintiffs are estopped from filing the present suit by their act, conduct and waiver? OPD
5. Whether defendants are entitled to special cost u/s 35-A CPC? OPD
6. Relief.

The plaintiff examined PW1 Mangal, PW2 Somdutt, PW3 Matadin and proved report of local commissioner Ex.P1 and site plan Ex.P2, site plan Abadi Ex.P3, copy of Naksha Khasra Paimaish Abadi Ex.P4, Pedigree tables Ex.P5 to Ex.P8 and closed the evidence.

The defendants on the other hand, examined DW1 Satyanarain, DW2 Badri Parshad, DW3 Ramotar, DW4 Jagdish, DW5 Matadin, DW6 Sheotaj, DW7 Sheochand and proved copy of sale deed dated 23.08.1983 Ex.D1, copy of judgment and decree sheet dated 16.03.1985 Ex.D2 and Ex.D3, copy of judgment and decree dated 16.03.1985 Ex.D4 and Ex.D5, copy of khasra Paimaish Ex.D7 and closed the evidence. Consequent thereupon, the Court of learned Sub Judge 2nd Class, Mahendergarh decreed the suit of the plaintiffs.

Upon appeal, the Court of learned Additional District Judge, Narnaul reversed the findings of the trial Court allowing the appeal of the appellants/defendants. That is how the parties have knocked at the doors of this Court.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & others’ Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019**, the Hon’ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and

Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Sanjay Mittal, Advocates for the appellants; Mr. Sandeep Kumar Yadav, Advocate for respondent No.1 and perusal of the records.

The plaintiffs have filed a pure simplicitor suit for permanent injunction and therefore in view of the law laid down in '**Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & others' 2008(2) RCR (Civil) 879**, a question of title cannot be gone in a suit simplicitor for permanent injunction. Thus, in view of this settled proposition of law, findings on issue No.1 have been rendered superfluous. It is the claim of the plaintiffs that they are owners in possession of the plot in dispute in the capacity as co-sharers. Admittedly the defendants happen to be related to the plaintiffs and the disputed property i.e. plot of land in the name of Jangi and Khemu sons of Rura, has never been proved to be owned by them. Even the pedigree table proved on the records is reflective of common lineage between the parties. But what is most intriguing is if the vendor of sale deed Ex.D1 had a legitimate and legal title in the property, subject matter of the sale deed, it has to be established beyond any doubt because mere execution of a sale deed does not bestow upon the vendee any right, title or interest in the property

unless or until it is duly established that its vendor had a better title to transfer the property.

Thus, scanning the evidence of the plaintiffs as well as the defendants, oral as well as documentary, there is nothing apparent and tangible to clearly establish as to who was in legal possession of the disputed property on the date of filing of the suit. Since the plaintiffs have filed the suit, onus lay heavily upon them to establish it so in terms of Section 101 to 106 of the Evidence Act, which they have failed to do so. Unless or until the parties seek declaration as to the ownership and get the material question of title adjudicated, it would be too preposterous to pass any findings in a pure suit for permanent injunction. Thus, the premise that has been drawn by the learned first appellate Court is highly incorrect, contrary to the oral and documentary evidence on the record and since it is more of an evidence which is an indicator of the parties being co-sharers of this un-demarcated piece of land and therefore, to the mind of this Court no injunction can be granted to a co-sharer and it would be advisable for the plaintiffs to have filed a suit seeking declaration of title rather than simplicitor suit for injunction. Reliance placed on **Anathula Sudhakar's case (ibid)**. The learned first appellate Court has meandered into a misadventure to adjudicate on who are the heirs of deceased Raghunath and so as to who were the actual owners of

the disputed property, which were not the issues to be adjudicated in this suit. In the light of what has been detailed and discussed above, the impugned findings need to be set aside partially and suit of the plaintiffs deserves to be dismissed. The present appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

March 6, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No