

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

RSA No.1075 of 1991 (O&M)
Date of decision: 12th February, 2020

Kehar Singh & others

... Appellants

Versus

Hira Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Aseem Aggarwal, Advocate for the respondents.

FATEH DEEP SINGH, J.

The brief facts which are necessitated to be highlighted in judicious adjudication of the matter are that plaintiffs Hira Singh, Ram Singh and Kartar Singh filed against defendants Kehar Singh, Bhoop Singh, Tek Chand, Bhulla Ram and Pat Ram, their co-villagers, a suit for permanent injunction seeking a decree restraining the defendants from interfering into the peaceful possession of the plaintiffs over the Gatwar detailed in the site plan annexed with the plaint or further for raising any construction or encroaching thereupon in any manner. The claim is based on the averments that since their forefathers the plaintiffs were using the said property where a tubewell, water tank, chhappar, bitoras and other articles have been kept and threatened over the action of the defendants has led to filing of the suit.

The defendants in their joint stand taken in their written reply claimed that the suit of the plaintiffs was not maintainable on account of suppression of material facts and denied possession of the plaintiffs and claimed that the defendants were using their own land for digging purposes and denied the claim of the plaintiffs.

The trial Court framed the following issues:-

1. Whether the plaintiffs are owners in possession of Gatwar shown by letters ABCD in the site plan? OPD
2. Whether the plaintiffs have no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable? OP
4. Whether the plaintiffs have concealed the material facts from the Court and hence not come with clean hands, if so what effect?
5. Relief.

The plaintiffs examined Angrej Singh record keeper as PW-1, Sat Narain Verma draftsman as PW-2, Ram Singh PW-3, Ashok Vashista Advocate PW-4 and Piare Lal PW-5. The defendants on the other hand examined Bhoop Singh as DW-1, Sis Pal as DW-2 and Sardar as DW-3.

The learned trial Court decided issues No.1, 2, 3 and 4 against the defendants and in favour of the plaintiffs, and consequently decreed the suit of the plaintiffs with costs. The Court of learned

Additional District Judge, Gurgaon through impugned findings dated 19.04.1991 dismissed the appeal. The same is subject matter of challenge of the instant regular second appeal by the unsuccessful defendants.

Heard Mr. Sanjay Vij, Advocate for the appellants; Mr.Aseem Aggarwal, Advocate for the respondents and perused the records of the case.

The pleadings are the very foundation of the case of a party and on the basis of which the party may succeed or fail. The very crux of the claim of the plaintiffs in their suit is seeking a decree for permanent injunction restraining the defendants from raising any construction, encroaching upon the disputed property and in the alternative in case they succeed in doing so, a decree for possession by demolition of the said construction. From the same, it is quite evident and much demonstrable that at the time of filing of the suit, all was not well with the case of the plaintiffs and it gives an inkling that the defendants were in the process of raising construction when the suit had come about. Rather than filing a suit for declaration and possession which was legally appropriate, the plaintiffs have only filed a suit simplicitor for permanent injunction. During the course of hearing, learned counsel for the two sides fairly concede that at no point of time during the pendency of the suit there has been amendment of the reliefs being sought which could have moulded the grant of reliefs by the courts below. In the light of well enshrined principle that in a simplicitor suit for permanent injunction the courts

cannot adjudicate on the question of title, issue No.1 is itself suggestive that the Court is trying to frame an issue and decide upon the question of ownership and which was highly inappropriate and uncalled for when it was never part of the pleadings of the parties. No issue of entitlement of a decree for permanent injunction had come about and framed by the Court below. The findings returned thereon certainly stir the judicial conscience and is quite contrary to the judicial principles of adjudication of disputes between the parties. Even in the impugned findings, learned first appellate Court has clearly rushed through the matter without application of mind and without even the relief of mandatory injunction being sought or having arisen or claimed or evidenced by any sort of evidence during the pendency of the suit, the same has been granted, is reflective that all canons of judicial principles have been thrown off to the winds. More so, by virtue of Section 41(h) of the Specific Relief Act, 1963 where a more efficacious remedy is available to a party, then a simplicitor suit for permanent injunction cannot be instituted nor any relief granted as an alternative remedy was clearly available to the plaintiffs. Besides wrong valuation for purposes of Court fees, jurisdiction is there. The judgment of the learned Additional Senior Sub Judge, Gurugaon dated 14.06.1989 and that of learned Additional District Judge, Gurgaon dated 19.04.1991 are inherently perverse and illegal, and need to be set aside by way of acceptance of the instant appeal. Since it is not a case where only an issue left out is to be framed and report in terms of Order XLI Rule 25 CPC

needs to be called for but one under Order XLI Rule 23-A CPC in view of extraordinary exceptional circumstances having arisen therein which inherently from the decision of the learned trial Court to that of learned first appellate Court was never ever considered which findings are clearly off the tangent to the suit and thereby necessitates remanding the matter to the trial Court to frame proper issues and adjudicate thereupon on the basis of pleadings and evidence already available on record and pass judgment in accordance with law. As the parties are already at loggerheads since the year 1989, necessitates issuance of directions to the Court concerned to ensure that the same is disposed off preferably within a period of six months from the date the parties put in appearance before it.

Parties through their counsel are directed to appear before the trial Court on 18.03.2020. The appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

February 12, 2020

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No