

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 509 of 2018 (O&M)
Date of Decision: 3.3.2020**

Darshan Singh

---Appellant

versus

Baljit Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Namit Gautam, Advocate
for the appellant**

Rekha Mittal, J.

Darshan Singh, the appellant-plaintiff filed suit for possession of plot measuring approximately 9 marla 4 sarsahi, detailed in head note of the plaint, by claiming himself to be owner of the suit property on the basis of allotment made to his ancestors namely Gulab and Diwan Chand out of their bachat/proprietorship in shamlat deh. The courts have consistently held that appellant-plaintiff can not assert his claim for possession as he has failed to prove his title to the suit property on the basis of any evidence.

Counsel for the appellant would argue that earlier Baljit Kaur-defendant No. 1 filed suit for permanent injunction restraining the defendants therein including appellant Darshan Singh from interfering in her possession or dispossessing her from the property shown in red colour marked as 'ABCD', elucidated in the head note of the plaint in that suit and the same was decided vide judgment dated 6.11.2007 Annexure A1 passed by the Additional Civil Judge (Junior Division), Phillaur and appeal filed

against the said judgment was dismissed by the Additional District Judge, Jalandhar vide decree dated 12.10.2010 Annexure A2. It is argued that in the previous litigation between the parties, the defendants therein were held to be owners of the suit property, therefore, findings recorded in the said suit are sufficient to support plea of the appellant in respect of his ownership of the suit property, thus entitle to recover possession from the respondents-defendants. In support of his contention, he has relied upon judgment of this court **Lal Singh and others vs. Surjit Kaur 2005(4) RCR (Civil) 719.**

I have heard counsel for the appellant and perused the paper book particularly various annexures appended with the grounds of appeal.

Be that as it may, there is no dispute about the settled position in law that findings qua ownership in a suit for injunction would neither constitute res judicata nor would be binding upon the parties in subsequent litigation involving question of title unless the question of ownership was raised in the suit for injunction and its adjudication was necessary for deciding the question of entitlement of the plaintiff therein to seek permanent injunction. Undenyingly, in the previous suit for permanent injunction, the courts neither framed an issue with regard to ownership of the property subject matter of the said suit nor the question of ownership was necessary to be adjudicated upon for determining entitlement of the plaintiff therein to seek injunction against interference in her possession or dispossession therefrom forcibly and illegally. That being so, the appellant can not derive any advantage to his contention from any findings qua ownership recorded in the previous litigation. In this context, reference can

be made to judgment of Hon'ble the Supreme Court **Gram Panchayat of village Naulakha vs. Ujagar Singh 2000 (4) RCR (Civil) 749**. In this view of the matter, the appellant can not derive any advantage to his contention from the judgment in **Lal Singh and others' case (supra)** decided in view of peculiar facts and circumstances of the case. In view of the above, I do not find an error much less perversity in concurrent findings recorded by the courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

3.3.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No