

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3910 of 2017 (O&M)

Date of Decision: 21.05.2020

Ajit Singh

... Appellant(s)

Versus

Raj Kumar Sharma and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Rahul Sharma, Advocate
for the appellant.

Mr. N.S.Shekhawat, Mr. Tanvir S. Grewal and
Mr. Sahil Gupta, Advocate for respondent No.1.

Mr. S.C.Pathela, Advocate
for respondent No.2.

Anil Kshetarpal, J.

The appellant/defendant has filed the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit filed by the respondent/plaintiff with the following prayers:

“It is, therefore, prayed that a decree for mandatory injunction thereby directing the defendant to hand over/surrender the possession of plot measuring 15 marlas, khasra No. 6610/6023/5445 to 5450/3287 to 3290/3293 to 3299, bounded as:

East : Rasta;

West: Back-side of Punjab National Bank.

North: Shop;

South: Rasta;

situated at Central Town, Phagwara, District Kapurthala, (Phagwara-Garbi) Hadbast No. 74, as per Jamabandi for the year 2000-01 after demolishing and removing the construction/superstructure/Malba existed at present, therefrom, on the basis of title of plf. And his brothers:

AND

Decree for permanent injunction restraining the defendant, his attorney/agent/servant/employee etc. and/or anybody else acting for and on his behalf from raising any sort of construction, changing the nature of the property, letting out, creating any charge, mortgaging of transferring the said plot to the detriment of the plf. Without having any right, title or interest in it, alongwith costs, be passed in favour of the plaintiff and against the defendant.

Any other relief found just and proper under the given circumstances be also awarded to the plaintiff.”

On 29.05.2018, after hearing arguments at length, the following order was passed:

“In this case, arguments were heard at some length. However, at that stage it is felt necessary that Improvement Trust, Phagwara and concerned Tehsildar, Phagwara be impleaded as parties so that the correct facts can be brought on record.

Learned counsel for the appellant has filed an application for impleading Improvement Trust, Phagwara as a party-respondent.

Learned counsel for the respondent submits that in regular second appeal, this Court should not allow a new party to be added. He submitted that it would result in a de-novo trial. This Court has considered the submission. However, keeping in view the dispute involved in the present case, particularly the allegations that the land owned by the plaintiff-respondent had been validly acquired, it would be necessary to implead Improvement Trust, Phagwara and Tehsildar, Phagwara are added as respondent-defendant.

In view thereof, the application is allowed and on oral request of counsel for the appellant, Tehsildar, Phagwara is also impleaded as party respondent.

Let notice be issued to newly added respondents, after learned counsel for the appellant, files an amended memo of parties alongwith process fee.

List in urgent on 22.08.2018.”

Thereafter, on 23.01.2019, the following order was passed:

“Improvement Trust, Phagwara and Tehsildar Phagwara were added as party respondents vide order dated 29.05.2018.

Counsel representing Improvement Trust, Phagwara, has filed an affidavit that the land in dispute was

compulsorily acquired. Tehsildar, who appeared before the Court, has orally as well as an affidavit stated to that effect.

Keeping in view the aforesaid facts, it would be necessary for the Court to arrive at a finding as to whether the property in dispute was subject matter of valid acquisition. In these circumstances, this Court is of the considered view that a report be called from the Civil Judge in this regard. The report would be submitted positively within a period of six months after granting opportunity to lead evidence to all the parties including newly added respondents/defendants. The record is already available with the trial court.

The parties through their counsels are directed to appear before the court on 01.02.2019. Office to forward complete photocopy of the paper book to the trial court. “

Pursuant to the aforesaid directions, a report from the learned Civil Judge (Junior Division), Phagwara dated 19.07.2019 has been received. On careful perusal thereof, it is apparent that the report is also in favour of the plaintiff and against the appellant/defendant. In para No. 13 of the report, it has been reported that the land comprised in khasra No. 6610 was never acquired. Para No. 13 of the report is extracted as under:

“13. It is most humbly submitted that the plaintiff has nowhere challenged the acquisition proceedings in the main suit filed by him rather it is his case that land belonging to him was never acquired by the trust. As such, he has filed suit against the defendant Ajit Singh for recovery of possession of

the suit land. However, during the course of proceedings it has duly come on record that course of proceedings it has duly come on record that vide award, Ex.DW3/5 (along with Annexures), khasra No. 6622, 5445-5450, Min 3287 to 3293 and 3290 to 3299 belonging to the plaintiffs have been acquired by the trust. However, it is pertinent to mention here that there is no reference of khasra No. 6610 in any of the award of acquisition proceedings. Thus, prima facie it is established that khasra no. 6610 was never acquired during acquisition proceedings. But, to utter dismay, none of the parties appearing before the court have brought any record from where the specific area of khasra no. 6610 can be ascertained by the Court. Even during the arguments, when a specific query was put by the Court to all the counsels with regard to area of khasra no. 6610, the parties as well as department officials have shown their inability to disclose the specific area which falls in khasra no. 6610, which was never acquired by the trust in the acquisition proceedings.”

After the receipt of the report, learned counsel for the parties were permitted to take a copy thereof and assist this Court. On 25.2.2020, arguments have once again been heard and the judgement was kept reserved.

The plaintiff has filed the present suit claiming to be a co-owner in the suit plot along with his brothers Amarjit Sharma, Shiv Sharma, Vijay Sharma and Ashok Sharma. It is claimed that the plaintiff and his brothers are residing in the United States of America and visited India off and on.

They had constructed one room in the suit plot along with the boundary wall after its purchase. When the plaintiff visited India in October, 2007, he was in shock to notice that the defendant is constructing shops in the suit plot without any right, title or interest and since the defendant, although requested him, he refused to stop construction and hand over the vacant possession of the premises, therefore, the suit was filed. The defendant contested the suit by claiming that he was attorney of P.B.Chadha and G.S.Walia who had sold the property through him to Mehanga Singh son of Pakhar Singh, who is in exclusive possession as owner thereof. It was further claimed that P.B.Chadha and G.S.Walia were allotted the plot in question by Phagwara Improvement Trust, Phagwara after its due acquisition.

Replication was filed by the plaintiff to the written statement filed and thereafter, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether the plaintiff has no locus-standi to file the present suit? OPD*
- 4. Whether no suit for mandatory injunction and permanent injunction is maintainable under the law? OPD*
- 5. Whether the suit is not valid for the purpose of Court fee and jurisdiction? OPD*

6. *Whether the plaintiff is guilty of suppression of material facts and has concealed the material facts from the Court? OPD*
7. *Whether the suit of the plaintiff is barred under Section 41-H of Specific Relief Act? OPD*
8. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
9. *Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD*
10. *Relief.”*

After framing of the issues, the parties were permitted to lead evidence. On appreciation of evidence, the learned trial Court decreed the suit filed by the plaintiff. The defendant filed the first appeal. The learned first Appellate Court, after re-appreciation of evidence, dismissed the appeal.

This Court has heard the learned counsel for the parties at length and with their able assistance, gone through the judgements passed by both the Courts below.

Learned counsel for the appellant has submitted that the judgements passed by both the Courts below are liable to be set aside being erroneous. It is further submitted that there is misleading and non-reading of evidence and therefore, the judgements passed by both the courts below are required to be set aside.

On the other hand, learned counsel for the respondent has submitted that although, as per the judgement passed by the Hon'ble Five Judges Bench in ***Pankajakshi(Dead) Through L.Rs. vs Chandrika &***

Others (2016) 6 SCC 207, the question of law is not required to be framed as Section 100 CPC is not applicable to the regular second appeals in this Court, however, the judgements passed by both the learned Courts below cannot be interfered with as per Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as “the Act”). He submits that the appellant has failed to make out a case for interference under Section 41 of the Act. As noticed above, both the learned Courts below have concurrently recorded the findings of fact. This Court, keeping in view the assertions of learned counsel for the appellant added Improvement Trust as well as the concerned Tehsildar as respondents and thereafter, directed the learned trial Court to forward the report after permitting the parties to lead evidence. As noticed above, the report is also against the appellant. The regular second appeals, in this Court, are regulated by Section 41 of the Act, which reads as under:-

“41. Second appeals—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:

- (a) the decision being contrary to law or to some custom or usage having the force of law:*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law:*
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;*

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section:

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) Repealed by Section 2B of Punjab Act 6 of 1941.”

From the reading of the aforesaid provisions, it is apparent that this Court has a limited scope while deciding the regular second appeal. Although, the learned counsel for the appellant made sincere attempts, however, failed to convince this Court that the judgements passed by both the learned Courts below suffer from any illegality or perversity requiring this Court to interfere any exercise of its jurisdiction under Section 41 of the Act.

In view of the above, there is no ground to interfere in the judgements passed by both the learned Courts below. Hence, the present appeal stands dismissed.

The miscellaneous application(s), if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 21, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No