

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RA-RS-35 of 2020 in/and
RSA No. 5506 of 2019(O&M)
Date of Decision:18.03.2021

Harnam Singh

.....Appellant

Versus

Kartar Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rakesh Bakshi, Advocate
for the applicant-appellant.

LISA GILL, J(Oral).

RA-RS-35 of 2020.

Prayer in RA-RS-35 of 2020 is for review of order dated 27.07.2020 passed by a Coordinate Bench (since retired) in CM-15665-C of 2019 in/and RSA No. 5506 of 2019, whereby delay of 2509 days in re-filing of the present appeal was condoned and the appeal was dismissed.

It is submitted that the appeal has been dismissed without recording of any reasons after adverting to the arguments raised on behalf of the appellant. It is thus prayed that this application be allowed.

The appeal along with application for condonation of delay in re-filing was dismissed vide order dated 27.07.2020, which is reproduced as under:-

“There is a delay of 2509 days in re-filing the present appeal. Although, the grounds for condonation of delay do not inspire confidence but even if the same are accepted and delay is condoned, this Court finds that even on merits, no interference is called for.

The suit was partly decreed to the effect that the

defendants were restrained from interfering except in due course of law into the peaceful possession of plaintiff over the property in dispute. The order was passed way back on 8.1.2011 and thereafter on 14.6.2012. It is not understood as to how the appellant can be aggrieved with such an order. Accordingly, no ground for interference is made out.

Dismissed accordingly.”

Keeping in view the facts and circumstances as well as arguments addressed, RA-RS-35 of 2020 is allowed and order dated 27.07.2021 is recalled.

At request of learned counsel for the appellant the appeal is taken up on board for hearing today itself.

Application is accordingly disposed of.

RSA No. 5506 of 2019

Appellant-plaintiff has filed this appeal being aggrieved of judgement and decree dated 08.01.2011, passed by the learned Addl. Civil Judge (Sr. Division), Naraingarh, whereby suit of the appellant-plaintiff was party allowed as well as judgement and decree dated 14.06.2012, passed by the learned Additional District Judge, Ambala, whereby appeal filed by the appellant-plaintiff was dismissed.

Brief facts necessary for adjudication of the case are that appellant-plaintiff filed a suit for declaration to the effect that he is the absolute owner in possession of his share in the property as detailed in the plaint on the basis of judgement and decree dated 19.10.1957, passed in Civil Suit No. 168/ 10 of 1956. It is pleaded that a dispute regarding inheritance of Nathu Ram, a member of the family of the plaintiff and defendants arose. Pedigree table as reproduced in the impugned judgement dated 08.01.2011, passed by the learned Additional Civil Judge (Sr. Division), Naraingarh, is reproduced as under:-

MOTI RAM

Gurandita	Khushal Singh @ Khusia	Ram Singh	Gulab Singh	Nathu Ram
Ishar Singh (Dead)	1.Khajan Singh	Bhula Singh	Sohan Singh	Died issueless
	2.Dhayan	1.Santokh Singh	Amar Singh	
	3.Piara Singh	2.Dalip Singh (Defdt)	Harman Singh (plaintiff)	
	4.Kartar Singh			

It is averred in the plaint that defendant no.1 namely Kartar Singh got a mutation entered in his favour on the basis of certain manipulated documents. Nathu Ram, died issueless on 27.08.1955. On the basis of will dated 15.06.1956, mutation was sanctioned in favour of defendant no.1. The said mutation was challenged and set aside vide judgement and decree dated 29.10.1957 passed in Civil Suit No. 168/10 of 1956. Present plaintiff, defendants no.1 to 5 and father of defendants no.6 and 7 namely Bhola singh were declared as owners in possession of the land in equal share. It is further averred that defendants no.2 to 7 handed over the land in question to the plaintiff's father longtime ago and since then, plaintiff-appellant's father was in cultivating possession over the suit land as '*Gair Marusi*'. Plaintiff's father, it is averred moved an application on 17.05.1983, before the concerned Tehsildar for getting mutation entered and sanctioned in accordance with judgement and decree dated 29.10.1957. Plaintiff himself also moved an application on 01.12.1998 for the same, but no action was taken. In the meantime, defendant no.1 threatened to alienate the property. Hence the suit was filed.

Defendants no.6 and 7 admitted the plaintiff's claim. Defendant no. 1 contested the suit while taking various preliminary objections as well.

It was stated on merits that deceased-Nathu Ram was the real uncle of

defendant no.1, who died unmarried and issueless. He executed will dated 13.02.1955 in favour of defendant no.1 and the mutation was rightly sanctioned in his name. Decree in question, it is stated was wrongly passed not being under the jurisdiction of the then learned Senior Sub Judge, Ambala. Moreover, plaintiff, it is stated never challenged the Sanad dated 24.12.1956 vide which the suit land was allotted to defendant no.1. It was further asserted that the entries in the revenue record reflecting the plaintiff and other defendants in possession, are illegal and incorrect. Defendant no.1 claimed to be the exclusive owner in possession of the suit property.

Replication was filed. From the pleadings of parties, following issues were framed by the learned trial Court vide order dated 19.05.2005:-

1. Whether the plaintiff is entitled decree for permanent injunction and declaration as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether plaintiff has no locus standi to file the present suit? OPD
4. Whether the present suit is barred by limitation? OPD
5. Whether Civil Court has no jurisdiction to try the present suit? OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances of the case, concluded that the plaintiff failed to prove that he was the owner of the property in question. It is held that once Nathu Ram died issueless, it was only his two brothers namely Khushal Singh and Ram Singh, who were alive at the relevant time, who would be entitled to succeed to the property.

It is further observed that Amar Singh, father of the present appellant-

plaintiff being the brother's grandson (son's son) at the relevant time was not entitled to seek the property, not being a Class-I or II heir of the deceased-Nathu Ram. It was however held that possession of the plaintiff over the suit property was duly proved. Defendant no.1 appearing as DW-1 had admitted his possession over the disputed property. Defendants were restrained from interfering in the peaceful possession of the plaintiff over the property in dispute except in due course of law. Appellant-plaintiff's suit was partly decreed to this effect.

Appeal preferred by the appellant-plaintiff was dismissed by the learned Additional District Judge, Ambala, vide judgement and decree dated 14.06.2012. Learned Additional District Judge, Ambala, has rightly observed that the suit filed by the plaintiff was almost in the nature of execution / implementation of decree after a lapse of 47 years of passing of the judgement and that even the plaintiff's father who died in the year 1990 had never made any effort to get the entries corrected in his name and the suit had been filed after such long years by the plaintiff.

Aggrieved therefrom, this appeal has been filed.

Sole argument raised by learned counsel for the applicant-appellant is that the learned Additional District Judge, Ambala while dismissing the applicant-plaintiff's appeal vide judgement and decree dated 14.06.2012, has wrongly observed that the plaintiff is not entitled to seek injunction for protection of his possession. It is submitted that the learned trial Court while dismissing the appellant-plaintiff's suit in respect to the decree for declaration to the effect that he is the absolute owner of the property as detailed therein had rightly restrained the defendants from interfering in his possession except in due course of law. It is further submitted that the learned Additional District Judge, Ambala, while

accepting the plaintiff to be a tenant over the suit property has wrongly dismissed the suit *qua* permanent injunction. Learned counsel for the appellant submits that in the given facts and circumstances, decree of the learned trial Court insofar as the defendants were restrained from interfering in the peaceful possession of the plaintiff over the disputed property except in due course of law, should at-least be maintained. It is thus prayed that the present appeal be allowed.

I have heard learned counsel for the applicant-appellant and have gone through the file with his assistance.

It is reiterated that no argument has been raised regarding concurrent findings of fact returned by both the learned Courts below in respect to the claim of ownership raised by the appellant-plaintiff. Still, it is appropriate to observe that there is in-fact no illegality or infirmity in the said concurrent findings returned by both the learned Courts below. It is a matter of record that since 05.08.1959, revenue record reflects plaintiff and his predecessor-in-interest as a tenant over the property in question. Learned Additional District Judge, Ambala, in this respect has rightly observed that shelter of judgement dated 29.10.1957, Ex.P-1, passed in Civil Suit No. 168/10, is not available to the appellant as firstly there is no evidence on record to establish identity of the suit property in the present suit and the suit decided in the year 1957. Moreover, there is no basis on which the plaintiff seeks a declaration yet again that he is an absolute owner in possession of his share in the suit property while claiming that he has already been declared as an absolute owner in possession of his share vide judgement dated 29.10.1957, Ex.P-1.

Learned Additional District Judge, Amabala, in respect to grant of injunction has observed as under:-

“The plaintiff and his father has shown to be tenant over the land in dispute in the revenue record i.e., Jamabandi Ex.P-4 to Ex.P-7 and Ex.D-2 to Ex.D-5, however, by way of present suit, he is disclaiming this fact and claiming ownership over it. Since he had not proved himself to be owner of the property in question, by way of filing of present suit itself, even no injunction can be granted in his favour against the true owners, though admittedly, there is possession of the plaintiff over the suit property as tenant. **Since, it is admitted position that the plaintiff is tenant over the suit property, his possession can be disturbed only in due course of law. He is not entitled to seek injunction in the given circumstances and cross-objection has also been disposed of accordingly. The authorities relied upon by the learned Counsel for the appellant are not helpful to the case of the appellant.**”

(emphasis added)

It is evident that learned Additional District Judge, Ambala, has clearly and specifically observed that once the plaintiff is admittedly a tenant over the suit property, his possession cannot be disturbed except in due course of law and in such a situation, there is no question of seeking an injunction.

The apprehension raised by the appellant that in the absence of such an injunction, he shall be thrown out of the disputed property unceremoniously, is clearly unfounded. There is a reference to cross-objection in the impugned judgement dated 14.06.2012, passed by the learned Additional District Judge, Ambala, but learned counsel for the appellant is unable to throw any light thereon.

In my considered opinion, no question of law much less a substantial question of law arises for consideration in this appeal, challenging concurrent finding of facts, returned after proper appreciation of evidence by the learned Courts below.

No other argument has been raised.

It is to be noticed at this stage, that there is a delay of 2509 days in refilling of the present appeal. The only bald explanation in the application is that paper book of the appeal after return by the Registry with some objections, was kept in a bunch of admitted cases. Though, the same does not inspire much confidence, said application is duly supported by an affidavit of the then counsel, who had filed the appeal. In any case, as the matter has been adjudicated on merits, adjudication of application for condonation of 2509 days in refilling of the appeal, is rendered academic. Application is disposed of accordingly.

Present appeal being devoid of any merit, is consequently dismissed, with no order as to cost.

18.03.2021
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.