

**RSA-3023-2018 (O&M)
and connected appeal**

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

1. RSA-3023-2018(O&M)

Gajraj Singh and others

.....Appellants

Versus

Megh Raj

.....Respondent

2. RSA-6206-2017(O&M)

Gajraj Singh and others

.....Appellants

Versus

Megh Raj

.....Respondent

Date of decision: 11.02.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Mr. Ashok Aggarwal, Advocate for the appellants
(in both appeals)**

**Mr. Manoj Kumar Sood, Advocate for the respondent
(in both appeals)**

ANIL KSHETARPAL, J.

By this judgment two Regular Second Appeals i.e RSA-3023-2018 and RSA-6206-2017 shall stand disposed of.

Learned counsel for the parties are ad idem that both these appeals can be disposed of by a common judgment.

In both the appeals, the defendants in the trial court are the appellants.

These appeals have been filed against the judgment passed

by learned Additional District Judge, Faridabad, reversing the judgment of the learned trial court. The plaintiff/respondent-Megh Raj filed a suit for permanent injunction claiming that he is owner in possession of the residential plot measuring 90 feet x 35 feet depicted by letters ABCD in the lay out plan attached with the plaint. The plaintiff claimed that the aforesaid property is situated within the revenue estate of village Sarai Khawaja, District Faridabad and bounded by

East	:	Rasta Sara Aam
West	:	Mandir (Temple)
North	:	House of Chutan
West	:	House of Ram Chander

It is the pleaded case of the plaintiff that previously defendants' predecessor had filed a suit for injunction against the plaintiff's father which was dismissed on 05.11.1999. Appeal filed against the judgment of the learned trial court was also dismissed on 01.10.2011. The defendants contested the suit by submitting that the suit filed by the plaintiff is barred by res-judicata. It is claimed that the defendants are in settled possession of land bearing Khewat no. 310 Khatoni no. 372 rectangle no. 7 killa no.17(1-10) situated within the revenue estate of Village Palla as “*Gair Mourusi*” tenant under the Municipal Corporation, Faridabad. The defendants also filed a counter claim that they are “*Gair Mourusi*” tenants and are in possession of the land for the last 50 years. On appreciation of pleadings, the following issues were framed:-

“1. Whether the plaintiff is entitled to

the relief of Permanent injunction, as prayed for?
OPP

2. Whether the present suit is not maintainable in the present form? OPD

3. Whether the plaintiff has no cause of action or locus standi to file the present suit ? OPD

4. Whether the plaintiff has suppressed material facts from the knowledge of the court and is not entitled to the relief as claimed for? OPD.

5. Relief.

Thereafter, vide order dated 8.9.2014 following issues were framed by ld. Civil Judge, with respect to issues involved in the counter-claim:-

6-A Whether the counter-claimant is entitled to relief of decree of permanent injunction as prayed for? OPD.

6-B Whether the counter-claim is not maintainable? OPP

6-C Whether the counter-claimant has no cause of action? OPP.”

Learned trial court dismissed the suit, however, as noticed above, learned First Appellate Court has reversed the judgment of the trial court.

Before this Court examines the contentions of the learned counsel for the appellants, certain important findings, correctness whereof has not been assailed by the learned counsel for the appellants needs to be noticed.

(i) It is not in dispute that Kanhiya filed a suit against the plaintiff's father, which was dismissed vide judgment dated 05.11.2019. The aforesaid judgment was affirmed by the First Appellate Court on 01.10.2011.

(ii) Defendant no.1 Harinder Singh had taken a stand in civil suit no. RBT 535 dated 30.10.2000 that the land is owned and

possessed by the plaintiff-Megh Raj who has not been impleaded as a party in the said suit. The defendants had also filed a suit against Chuttan etc. with respect to the suit property which was dismissed by the court of Sh. R.K.Dogra, learned Civil Judge, Faridabad, on 05.11.1999.

(iii) The defendants have not produced any lay out plan to prove that the property in dispute falls within the revenue estate of village Palla and not within the revenue estate of village Sarai Khawaja.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper books. Learned counsel for the appellants has made the following submissions:-

(a) The details of the property have not been properly given and therefore, the suit was not maintainable.

(b) That the relief of possession could not be granted as no amendment of the plaint was allowed.

It may be noticed that the entire area surrounding the plot in dispute has already developed into a colony and has come under the purview of Municipal Corporation, Faridabad. The reference to the revenue estate is only for the purpose of identification. The plaintiff has not only identified the property by its size by describing its length and breath but also given the details of the properties surrounding the plot in dispute. Through the site plan Ex.P1 the property has been identified. Still further, learned First Appellate Court has examined the record and found that the description of the property given in Ex. P1 matches with the lay out plan Ex.PZ, produced in execution petition in some other case. The Court noticed that only difference between the two

lay out plans is with regard to the property situated on the western side. It has been noticed that in the lay out plan Ex.P1 towards the western side, house of Ram Chander has been shown whereas in Ex.PZ the house of Ram Chander, Girwar and Girdhari, who are brothers, has been shown. Thus, the learned First Appellate Court has come to a conclusion that the identification of the property is not in dispute. Still further, the defendants while filing the written statement do not dispute that their father did file a suit against the plaintiff which was dismissed on 05.11.1999. Further, the defendant no.1 Harinder Singh, as noticed above, has himself pleaded in a different litigation that the property in dispute is owned and possessed by the plaintiff.

Next argument of the learned counsel can be examined from two different angles. It is not disputed by the learned counsel for the appellants and noticed by the courts below that the plaintiff alleged forcible dispossession at the hands of the defendants during the pendency of the suit. He did file an application for amendment of the plaint so as to add the relief of mandatory injunction, which was allowed by the trial court. The defendants did file a revision petition, however, the same was disposed of while clarifying that the amendment would not affect the property in Village Palla. Thus, it is apparent that the amendment allowed by the trial court was never set aside. The defendants have failed to prove that the property in dispute is located in the revenue estate of Village Palla. Hence, learned First Appellate Court has correctly granted the relief of possession.

Still further, this aspect can be examined from another

angle. Learned First Appellate Court, on appreciation of evidence, has found as a matter of fact that the plaintiff was dispossessed during the pendency of the suit before the trial court. This finding has not been challenged by the learned counsel for the appellants. In such a situation, even in the absence of application for amendment, the court is well within its power to mould the relief, particularly, when the plaintiff has been dispossessed during the pendency of the suit. The courts have to do substantive justice and are not expected to defeat justice merely on the ground of technicalities. It has been noticed that the defendants have already unsuccessfully indulged in multifarious litigation.

Keeping in view the aforesaid facts, no ground to interfere in the detailed judgment passed by the Learned First Appellate Court is made out. Hence, both the appeals are dismissed.

11 .02.2021

rekha

Whether speaking/reasoned

Yes /No

Whether Reportable

Yes / No

(ANIL KSHETARPAL)
JUDGE