

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

CR-2048-2014

Decided on:-27.09.2022

PDM Religious and Educational Association

....Petitioner

Vs.

Satpal Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. B.S. Rana, Sr. Advocate with
Mr. Shubham Singh Gangola, Advocate,
for the petitioner.

Mr. Gunjan Mehta, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

The present revision petition has been filed by the petitioner/defendant for setting aside the orders dated 27.05.2013(P-4) and 17.02.2014 (P-7) passed by Ld. Civil Judge (Junior Division), Bahadurgarh; whereas an additional issue has been wrongly framed and the application for striking out the same has been dismissed.

Briefly stating, the respondent filed a suit for permanent injunction claiming himself to be the owner of 50/560th share out of the land comprised in Khewat No.81/58 min, khatoni No.90 and khasra No.10/16/1/(4-0), 25 (8-0), 11/21 (8-0), 17/19 (8-0) total Kitte 04 measuring 28 kanal 0 marla, situated within the revenue estate of village Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar.

Based on the aforesaid averment, the respondent-plaintiff sought injunction with a prayer for restraining the petitioner-defendant or

his agents/representatives for dispossessing him from the joint possession and also from changing the nature of the suit land, over specific khasra numbers, in a forceful or illegal manner without getting the same partitioned.

In the joint written statement, the petitioner stated that out of the land measuring 28 kanal and 0 marla, land comprised in 17/19 (8-0) already stands acquired by the State of Haryana and the remaining land comes to 20 kanal 0 marla. It has been further stated that out of the same, petitioner had purchased 18 kanal 4 marlas being 510/560 share comprised in Khewat No.81 min, khata No.90, kila No.10/16/1(4-0), 25 (8-0), 11/21 (8-0), total kitte 3 vide registered sale deed No.6241 dated 21.12.2004. It has been further stated that as an effect of the acquisition proceedings, the respondent-plaintiff remained owner of 1 kanal 16 marla land out of this 20 kanals, being its 50/560th share.

In response, respondent filed replication challenging the sale deed dated 21.12.2004 executed in favour of present petitioner on the ground that the predecessor/seller of the petitioner could not have alienated beyond his share left in the suit land, which was 17 kanals 10 marlas. Based on the pleadings, the learned trial court vide its impugned order dated 27.05.2013 framed an additional issue to the following effect:-

- “1. *Whether the sale deed 6241 dated 21.12.2004 and mutation No.2560 dated 26.05.2005 and mutation No.2192 dated 28.05.2000 and subsequent revenue record reflecting the ownership of defendant beyond 17 kanal 10 marla are illegal, null and void and not binding upon the rights of the plaintiff, if so to what effect?*
OPP”

Thereafter, an application dated 21.07.2013 was filed at the instance of present petitioner, before the learned trial Court seeking striking out of the additional issue. On 31.08.2013, respondent-plaintiff filed reply to the said application and stated that the issuance has been rightly framed by learned Civil Judge (JD).

After hearing both sides, the learned trial Court vide impugned order dated 17.02.2014, dismissed the aforesaid application, upholding its previous order 27.05.2013, regarding framing of additional issue.

By way of present revision petition, the petitioner has challenged both the orders dated 27.05.2013 (P-4) and 17.02.2014 (P-7) passed by the learned trial Court.

It has been contended on behalf of the petitioner-defendant that as the suit filed at the instance of the respondent-plaintiff was primarily regarding permanent injunction, specific issue on the point of validity of sale deed dated 21.12.2004 and the subsequent mutation based thereupon could not have been framed by the learned trial Court so as to convert the suit for permanent injunction into a suit for declaration without all concerned/ co-sharers including his vendors having been impleaded as party therein.

On the other hand, learned counsel for the respondent-plaintiff submits that the suit for permanent injunction filed by him was based on his title and as such, the declaration was always inherent therein. In view thereof, he further submits that the learned trial court did not commit any error of law while framing additional issue as regards the adjudication of the sale deed dated 21.12.2004.

I have heard learned counsel for the parties and have gone through the records.

Having perused the plaint which simpliciter is for grant of relief for permanent injunction, I find merit in the contention raised on behalf of the petitioner-defendant.

In a simpliciter suit for permanent injunction, in case, any such issue regarding declaration qua the validity of the sale deed dated 21.12.2004 is framed by the learned trial court, the same would mean that the finding recorded by the learned trial court on the validity of the sale deed in its judgment shall remain binding inter-se the parties for all subsequent litigations. It would also mean that without there being any specific prayer for declaration, the validity of sale deed would be adjudicated upon by the trial court. The effect of the passing of the impugned order shall be that the suit for permanent injunction shall be converted into a suit for declaration which legally shall be impermissible, unless all co-sharers including the vendor of petitioner-defendant are made party to the suit who are at least proper parties for the purpose of adjudication upon sale deed. As an effect of framing of the additional issue, the learned trial Court shall travel much beyond the right required to be adjudicated upon in the suit for permanent injunction.

Thus, I find merit in the present revision petition. Resultantly, the same is allowed. Impugned orders dated 27.05.2013(P-4) and 17.02.2014 (P-7) passed by the learned trial Court are set aside. However, the respondent-plaintiff shall be at liberty to either seek amendment of his plaint by claiming relief for declaration qua the sale deed dated 21.12.2004 including all subsequent mutation or he may file a fresh suit in this regard

taking the benefit of Order 7 Rule 6 of the CPC and also the pendency of the present suit including the present revision, for the purpose of seeking exemption from the law of limitation in case required, which shall be considered by the trial court sympathetically.

27.09.2022
sonika/sanjay

(HARKESH MANUJA)
JUDGE

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