

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-412-2023 (O&M)

Date of decision: January 20, 2023

Sham Lal

...Petitioner

versus

Kamlesh Rani

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Gupta, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 14.10.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division), Patiala whereby application dated 06.09.2022 (Annexure P-2) under Order 23 Rule 1(3) read with Section 151 of Code of Civil Procedure, 1908 filed by the petitioner-plaintiff to withdraw the suit with liberty to file fresh one on the same cause of action, was dismissed.

2. Learned counsel for the petitioner-plaintiff, *inter alia*, contends that plaintiff-petitioner filed a suit seeking permanent injunction restraining respondent-defendant from interfering in the peaceful possession of the property in question as well as for mandatory injunction. Notice was issued and respondent-defendant filed written statement. Before framing of issues, plaintiff-petitioner filed an application under Order 23 Rule 1(3) read with Section 151 of Code of Civil Procedure, 1908 seeking permission to withdraw the suit with liberty to file fresh one on the same cause of action. Learned Court

below vide impugned order dated 14.10.2022 (Annexure P-1) dismissed the said application.

2.1. Learned counsel further contends that at the time of filing the suit, plaintiff-petitioner failed to seek declaration *qua* the property in question and simpliciter suit for injunction had been filed. He further contends that simpliciter suit for injunction without claiming declaration was not maintainable and as such, there was a formal defect in the suit. Learned counsel also contends that respondent-defendant is not going to suffer any loss on account of the fact that application has been filed by the plaintiff-petitioner at initial stage itself even before framing of issues by learned trial Court.

3. Given the nature of order being passed, there is no necessity to issue notice to the respondent, as no prejudice would be caused to him. Notice to the respondent is thus dispensed with.

4. Heard.

5. Since it is the objection taken by the respondent-defendant in the written statement that in fact she is the owner in possession of the property and simpliciter suit for injunction is not maintainable without seeking declaration *qua* proprietary rights of the suit property, in the premise, petitioner-plaintiff on legal advice, moved an application to cure the defect in the plaint by seeking to withdraw the suit with liberty to re-file a fresh suit on the same cause of action after carrying out necessary changes, including seeking relief of declaration along with injunction. In this context, reference may also be had to Section 34 read with Section 38 (1) of the Specific Relief Act, 1963 (for short 'Act'). The same are extracted hereinbelow:-

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying,

or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

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38. Perpetual injunction when granted.—(1) *Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.”*

6. From perusal of the above, even otherwise, it was required on the part of plaintiff-petitioner to have sought declaration while seeking relief of injunction which is consequential benefit to the declaration.

7. Reference may also be had to Apex Court judgment dated 07.09.2021 rendered in **CA Nos-5575-5576-2021** in case titled **Kayalulla Parambath Moidu Haji versus Namboodiyil Vinodan**, wherein it is held that simpliciter suit for permanent injunction without seeking declaratory relief *qua* the same is not maintainable, especially in a case where title of the suit property is disputed, as is the case herein. For ready reference, Paras-10 to 12 of the same are reproduced, as below:

“10. *The short question that falls for consideration before us is: Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?*

11. *The issue is no more res integra. The position has been crystalized by this Court in the case of Anathula Sudhakar (supra) in paragraph 21, which read thus:-*

“21. *To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*

(a) *Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a*

cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiffs lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammol, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

12. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.”

8. Perusal of the above clearly reflects that permanent injunction can only be granted, if there is no real contest about the title of the plaintiff. In the present case, there is no such situation. Rather, it is the specific case of the defendant that she is the owner in possession of the property and without seeking relief *qua* the proprietary rights on the title of the suit property by way of declaration, plaintiff-petitioner is not entitled to any injunction.

9. In the premise, I am of the view that learned trial Court ought to have accepted the application filed by plaintiff-petitioner under Order 23 Rule 1(3) read with Section 151 of Code of Civil Procedure, 1908, by affording him the opportunity to meet with the objections taken by the defendant-respondent in the written statement.

10. As an upshot, revision petition is allowed. Impugned order dated 14.10.2022 (Annexure P-1) is set aside, subject to payment of costs of Rs.10,000/- to be paid to respondent-defendant. Application under Order 23 Rule 1(3) read with Section 151 of Code of Civil Procedure, 1908 filed by the plaintiff-petitioner is allowed. He is permitted to re-file the fresh suit on the same cause of action.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No