

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

**CIVIL REVISION No.7547 of 2018 (O&M)
RESERVED ON : 22.02.2023
DATE OF DECISION : 28.03.2023**

Sukhraj SinghPetitioner

versus

Mohinder Singh and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. RVS Chugh, Advocate for the petitioner

Mr. M.S. Viridi, Advocate for respondent Nos.1 to 4

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ALKA SARIN, J.:

The present revision petition has been preferred by the defendant No.1-petitioner against the impugned order dated 21.08.2018 passed by the Additional Civil Judge (Senior Division), Mansa whereby additional issues have been framed by the Trial Court.

The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for permanent injunction to the effect that they are in possession as *gair marusi* on land measuring 67 kanals 4 marlas fully described in the plaint as per the jamabandi for year 2009-2010 situated at Hamirgarh Dhaipi, Tehsil Bhikhi, District Mansa and that the defendants had no right to interfere in the possession of the plaintiff-

respondents and that the defendants be restrained from interfering in the possession of plaintiff-respondents. After the plaintiff-respondents had concluded their evidence and the evidence of the defendants had started, an application was filed by the plaintiff-respondents for framing additional issues with regard to the pleas taken by the defendant No.1 in his written statement regarding execution of a transfer deed dated 03.03.2016 in favour of one Gurdial Singh and regarding sale deed dated 10.05.2016 executed by the said Gurdial Singh in favour of the defendants. The application was contested by the defendants and a reply was filed by defendant No.2. Vide the impugned order dated 21.08.2018 the following additional issues were framed by the Trial Court :

“5-A) Whether Kartar Singh, Mohan Singh, Kirpal Singh sons of Ralla Singh had transferred the land in favour of their brother Gurdial Singh on 03.06.2016? OPD

5-B) Whether the defendants have purchased the suit property vide sale deed dated 10.05.2016 from Gurdial Singh? OPD

5-C) Whether the defendants are bonafide purchaser of the suit land, without notice, for consideration? OPD

6) Relief”

Aggrieved by the said order passed by the Trial Court the present revision petition has been filed by the defendant No.1-petitioner. The defendant No.1-petitioner relying on the judgment of the Supreme

Court in the case of **Anathula Sudhakar vs P. Buchi Reddy (Dead) by LRs & Ors. [2008 (2) RCR 879]** has contended that in a suit for permanent injunction the issue of title cannot be gone into. The learned counsel has further contended that in case the plaintiff-respondents seek to challenge the sale deed and the transfer deed, a suit for declaration would necessarily have to be filed and the issue of title cannot be gone into in a suit for simpliciter injunction.

Per contra, the learned counsel for the plaintiff-respondents has contended that even in a suit for injunction the question of title can be gone into if the issues are framed and evidence led accordingly.

I have heard the learned counsel for the parties.

In the present case the plaintiff-respondents filed a simpliciter suit for permanent injunction for restraining the defendants from interfering in their peaceful possession. The suit was contested by the defendants setting up their ownership by relying on a transfer deed dated 03.03.2016 and sale deed No.187 dated 10.05.2016 and mutation dated 24.05.2016 based on the said sale deed. The said written statement was filed on 01.03.2017. On 22.01.2018 the application for framing of additional issues was filed. The Trial Court framed three additional issues qua the transfer deed and sale deed as reproduced above.

In the present case there is no challenge to the fact that Kartar Singh, Mohan Singh, Kirpal Singh, sons of Ralla Singh, executed a transfer deed in favour of their brother Gurdial Singh on 03.03.2016 as also no challenge has been laid to the sale deed dated 10.05.2016 executed by

Gurdial Singh in favour of the defendants. In the absence of any pleadings, there possibly could not have been any additional issues framed by the Trial Court. The Supreme Court in the case of Anathula Sudhakar (*supra*) has held as under :

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

(a) Where a cloud is raised over 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 plaintiff's 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 (supra)]. 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 plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

In the present case the necessary pleadings are woefully missing and in the absence of any pleadings there cannot be any possible challenge to the transfer deed dated 03.03.2016 and the sale deed dated 10.05.2016 relied upon by the defendants. Where there are necessary pleadings regarding title and appropriate issues relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title even in a suit for injunction. However, such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

In view of the above and in view of the law laid down by the Supreme Court, the present revision petition is allowed. The impugned order is accordingly set aside. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

28.03.2023
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NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
