

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2985 of 2000 (O&M)

Date of decision : 14.2.2023

...

Sukhdev Singh

.....Appellant

vs.

Sher Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None

...

H. S. Madaan, J.

1. As per the report by the Registry, the appellant and his attorney have expired. As per amendment to Order 22 CPC, it is the duty of the legal representatives to approach the Court. None of the legal representatives of deceased -appellant have been brought on record, as per amendment in Order 22 CPC, by this Court. Therefore, I proceed to decide the case, after going through the record.

2. Briefly stated, facts of the case are that, plaintiff – Sukhdev Singh had brought a suit against defendants Gurbax Singh and others, seeking a decree for mandatory injunction, directing defendants No. 1 to 6, to remove manger along A, C and barbed wire around site ABC located in Abadi of village Kumbra, in addition to seeking decree for permanent injunction, restraining the defendants from making any further construction so as to deprive the plaintiff

and other residents of the village from using the common site.

3. As per case of the plaintiff, he and other defendants are residents of village Kumbra. There is an old pond existing there, which is being used for providing drinking water to the cattle and to enable the cattle to take bath there. Water from the pond is being used by the residents for different purposes. On the Northern side of the pond there is common space used by the residents for loading and unloading bullock carts, as resting place of cattle before entering and coming out of the pond. It is used for other purposes also like playing games, hosting functions etc. Of late, the defendants No.1 to 6 started tethering their cattle and then enclosed it by barbed wire fence. They threatened to raise construction there to which they have no right. The plaintiff asked defendant No. 7 - Gram Panchayat to get the encroachment removed but to no effect. Rather the Gram Panchayat is siding with defendants No. 1 to 6. Ultimately, feeling aggrieved, the plaintiff had brought the suit in question.

4. On notice, defendants No. 1 to 6 appeared and file a joint written statement, contesting the suit, raising various legal objections, on merits contending that they are in exclusive possession of the property in dispute for more than 100 years and the suit property is not a common land and Gram Panchayat has no concern therewith. Since Gram Panchayat is party to the suit, question arises as to whether the suit property is Shamlat Deh. Therefore, jurisdiction of civil court is barred under Section 11 of the Punjab Village Common Land Regulation Act, 1961. There is only a street between houses of the defendants and the suit property. It is encroached by the barbed

wire and is used by the defendants for tethering cattle and storage purpose. Eastern side of the site is metalled road. There is no pond adjoining the suit property. As a matter of fact, the plaintiff himself has encroached upon the street on the Northern side. Refuting the remaining allegations, the answering defendants prayed for dismissal of the suit. In the separate written statement filed by it, defendant No.7, admitted that defendants No. 1 to 6 are in possession of the suit property for more than 30 years. It contended that others residents are also in possession of the Abadi and no action can be taken. The plaintiff had encroached upon the path also.

5. In the replication filed by the plaintiff, the averments made in the written statement filed by defendants No, 1 to 6, were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to the mandatory injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has not locus standi to file the present suit? OPD
5. Whether the civil Court has no jurisdiction under Section 13 of the Punjab Village Common Land Act

as alleged? OPD

6. Relief.

7.. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

8. After hearing the arguments, the trial court of Civil Judge (Junior Division), Kharar, decided issue No. 1 against the plaintiff and in favour of the defendants, holding that the plaintiff is not entitled to the mandatory injunction prayed for. Issue No. 2 was decided holding that till the title in the suit property is settled qua the Gram Panchayat, even if the defendants had put a barbed wire or constructed manger, they had no right to continuing doing so, as such they were permanently restrained from raising further constructions on the suit property so as to put the same in the exclusive use thus depriving the plaintiff from ever using the same. Issue No. 3 was decided against the defendants and in favour of the plaintiff. Issue No.4 was decided in favour of the plaintiff and against the defendants. Issue No.5 was decided in favour of the plaintiff and against the defendants, holding that jurisdiction of Civil Court was not barred, vide detailed judgment dated 31.10.1996, suit of the plaintiff was partly decreed, in as much as defendants No. 1 to 6 were permanently restrained from raising any further construction in the site ABC described in the head note of the plaint, so as to put it to the exclusive use and deprive the plaintiff from using the same.

9. Feeling aggrieved by the said judgment and decree, defendants – Sher Singh, Kher Singh, Nasib Singh, Waryam Singh and Jagdish Singh, had preferred an appeal before the District Judge,

Rupnagar. That appeal was assigned to Additional District Judge, Rupnagar, who vide judgment dated 19.4.2000, allowed the appeal, setting aside the judgment and decree passed by the trial Court and dismissing the suit filed by the plaintiff.

10. Feeling aggrieved, the plaintiffs have approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents. Only respondents No. 1 to 5 had put in appearance in the Court. Subsequently, both the parties had absented from the Court.

11. After going through the record, I find that the judgment passed by the Ist Appellate Court of Additional District Judge, Rupnagar, is much more elaborate, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. It needs to be mentioned here that defendants NO. 1 to 6 being in exclusive possession of the site in dispute is established on the record. Even the village Gram Panchayat, in the written statement filed by it has not disputed so, rather coming up with the plea that such defendants are in exclusive possession for the last 30 years adding that, so are the other residents of the village. Thus the Gram Panchayat, is not raising any dispute with defendants No. 1 to 6, claiming ownership of the site in question. It being so, the jurisdiction of the Civil Court in such like matter is not barred under section 13 of the Punjab Village Common Land Regulation Act, 1961.

12. With the exclusive possession of defendants No. 1 to 6 having being established, the trial Curt itself had come to the conclusion that plaintiff was not entitled to the decree for mandatory

injunction, directing the defendants No, 1 to 6 to remove manger etc. from the site in dispute, though it found the plaintiff entitled to decree for permanent injunction. However, the plaintiff had filed to make out a case for grant of permanent injunction in his favoiur and he was wrongly granted decree for permanent injunction by the trial court, as has been rightly noticed by the learned Additional District Judge, Rupnagar, in para No. 10 of the judgment, for being entitled to grant of permanent injunction, the plaintiff was required to establish some right over the disputed site in order to restrain the contesting defendants – appellants from raising any further construction and putting it to exclusive use and depriving the plaintiff in using the same. The plaintiff did not come up with the plea that he was owner of the site in question or that the same was Shamlat Deh vested in the Gram Panchayat. The case of the plaintiff has been that the suit property is being used since long by inhabitants of the village for various purposes. He had not claimed any easementary rights. Learned Additional District Judge, had further noticed that the plaintiff was claiming benefit not only for himself but whole of the village without complying with the provisions of Order 1 Rule 8 of the CPC. Therefore, no injunction could be granted in his favour. The suit property is situated within Lal Lakeer of the village, showing that it is part of Abadi Deh. Therefore, the suit of the plaintiff was rightly dismissed by way of acceptance of appeal by the learned Additional District Judge, Rupnagar.

13. No substantial question of law arises in the present appeal.

14. Finding no merit in the appeal, the same stands dismissed.

14.2.2023
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(H.S. Madaan)
Judge

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