

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

RSA-3527-1999(O&M)

Date of Decision:-16.2.2023

Gurbachan Singh

...Appellant

Versus

Kabil Singh(since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.V. Sharma, Sr.Advocate with
Mr.Tushar Sharma, Advocate
for the appellant.

Mr.Rajesh Sethi, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Gurbachan Singh son of Charan Singh, resident of village Bighar, Tehsil Fatehabad, District Hisar (now Fatehabad is a separate District) had brought a suit against defendants Kabil Singh son of Ganga Singh, resident of village Basin, impleading Hakam Singh son of Mehtab Singh and Chanda Singh son of Kharak Singh, both residents of village Bighar as proforma defendants.

2. In the said suit, the plaintiff had sought a decree for permanent injunction restraining defendant No.1 from interfering in his possession over agricultural land bearing Khasra No.497//7(8-2), 8/1(2-0) total land measuring 10 kanals 2 marlas, situated at village Bighar, Tehsil Fatehabad (hereinafter referred to as the suit land).

3. As per the case of the plaintiff, proforma defendants No.2 and 3 are owners of the suit land which they had leased out to the plaintiff after harvesting wheat crop w.e.f. Kharif 1988 in the form of tenant at Will on 1/3rd batai; the plaintiff has been in possession of the suit land in that capacity ever since and has not been evicted so far; the whereabouts of defendants No.2 and 3 are not known; defendant No.1 had procured a judgment and decree dated 18.1.1992 in Civil Suit No.714 of 1991 titled 'Kabil Singh Versus Hakam Singh etc.' by means of impersonation; the judgment and decree dated 18.1.1992 were passed in that civil suit and mutation No.639 was sanctioned on 30.3.1992 on the basis of said judgment and decree.

According to the plaintiff, the judgment and decree so procured by defendant No.1 and mutation sanctioned on the basis thereof are illegal, null and void; defendant No.1 threatened to interfere in possession of the plaintiff and to dispossess him from the suit land illegally and forcibly on the basis of that judgment and decree, not paying any heed to the request of the plaintiff to desist from do so. Feeling aggrieved, the plaintiff had brought the suit in question.

4. On notice, only defendant No.1 came forward to offer a contest. He filed a written statement *inter alia* raking up preliminary objections that the suit was against law and facts, as such was not maintainable in the present form; neither the plaintiff had any locus standi to file the suit nor any cause of action arisen to him to do so; the plaintiff was estopped by his own act and conduct; the plaintiff had suppressed the material facts from the Court; as a matter of fact defendant No.1 is owner

in possession of the suit land on the basis of exchange and entries in the name of the plaintiff in the revenue record are factually wrong having been manipulated by plaintiff in collusion with revenue officials. On merits, the answering defendant contended that proforma defendants No.2 and 3 were owners in possession of the suit land, which they had exchanged with defendant No.1 and that exchange was affirmed in judgment and decree dated 18.1.1992 passed in Civil Suit No.714 of 1991 titled Kabil Singh Versus Hakam Singh etc.; the proforma defendants No.2 and 3 had put in appearance in that suit and voluntarily suffered judgment and decree dated 18.1.1992; there was no necessity of impleading the present plaintiff in that suit; the judgment and decree passed in that suit were legal and valid so was the mutation sanctioned on its basis; the plaintiff had never cultivated the suit land; therefore there is no question of his being dispossessed therefrom illegally and forcibly. Such defendant prayed for dismissal of the suit.

5. Defendants No.2 and 3 had failed to put in appearance despite service by way of munadi, as such they were proceeded against ex-parte.

6. The plaintiff had filed replication to the written statement of defendant No.1 controverting the allegations in the written statement whereas reiterating the averments in the plaint.

7. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is in possession of suit land described in the head note of plant as tenant at Will on 1/3rd batai as alleged? OPP.

2. Whether the judgment and decree dated 18.1.92 passed in Civil Suit No.714 of 1991 titled 'Kabil Singh Versus Hakam Singh etc.' are illegal null and void as alleged? OPP.
3. Whether the plaintiff is entitled to the relief of permanent injunction restraining defendants from interfering into possession of plaintiff over suit land described in the head note of plaint?OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
7. Whether the plaintiff has no locus standi to file the present suit? OPD.
8. Whether the plaintiff has suppressed material facts from the Court? OPD.
9. Whether the defendant No.1 is entitled to special costs u/s 35-A of the CPC? OPD.

10.Relief.

8. To establish his case, the plaintiff got examined his special/general attorney Smt.Harbhajan Kaur as PW1 and Sh.Sewa Singh as PW2 and in addition to that he tendered in evidence documents Ex.P1 to Ex.P5.

9. On the other hand, the defendant No.1 has examined his special attorney Sh.Sawran Singh as DW1 and Sh.Des Raj , Patwari as DW2 besides tendering certain documents.

10. In rebuttal the plaintiff produced document Ex.P6.

After hearing learned counsel for the parties, the trial Court of Addl.Civil Judge(Sr.Divn.), Fatehabad dismissed the suit of the plaintiff with costs. In addition, special cost of Rs.500/- was awarded to defendant No.1, payable by the plaintiff. This was so done vide judgment and decree dated 26.3.1997.

11. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Hisar, which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 31.8.1999 dismissed the appeal.

12. Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by him be decreed.

13. Notice of the appeal was issued to the respondents and respondent No.1 has put in appearance through counsel. Whereas service of respondents No.2 and 3, who are proforma defendants was dispensed with.

14. I have heard learned counsel for the parties besides going through the records and I find that there is no element of merit in this regular second appeal.

15. The trial Court on deep and thorough analysis of the evidence brought on record by the contesting parties, in light of their pleadings and settled legal position has reached an inference that the plaintiff has failed

to prove that he has been in possession of the suit land as tenant at Will.

The main reasons for arriving at this conclusion are as follows:

(i) Though the plaintiff in the suit filed by him had alleged that proforma defendants No.2 and 3 had not put in appearance in the Civil Suit No.714 of 1991 filed by defendant No.1 against them and defendant No.1 had procured the decree by misrepresentation and fraud but then the plaintiff had failed to bring on record cogent and convincing evidence in that regard. The only evidence adduced was in the form of statement of PW1 Harbhajan Kaur wife and attorney of plaintiff but that was rebutted by DW1 Swaran Singh, Special Attorney of defendant No.1. Therefore, the plaintiff failed to establish that the judgment and decree dated 18.1.1992 passed in Civil Suit No.714 of 1991 titled 'Kabil Singh Versus Hakam Singh etc.' were illegal, null and void. A mutation had been sanctioned on the basis of that judgment and decree in favour of defendant No.1 in the revenue record and a valid title to the suit land got transferred in his favour.

(ii) As per the case of the plaintiff, he had been in cultivating possession of the suit land as tenant at Will on 1/3rd batai as reflected in the revenue record but then except for the entry in the revenue record, the plaintiff had not led any evidence as to when he was inducted in the suit land as tenant; to whom he had been paying the batai. The khasra girdawari in his favour had been changed without following prescribed procedure. The oral evidence adduced by the plaintiff that he has been in possession of the suit land was

not found to be cogent and convincing for the reason that PW1 Harbhajan Kaur, attorney of plaintiff had admitted in her cross-examination that her husband had gone to USA and thereafter she was in possession of the suit land. PW1 Harbhajan Kaur and PW2 Sewa Singh had admitted that the suit land was not let out in their presence. PW1 Harbhajan Kaur had admitted that rent was not paid by plaintiff Gurbachan Singh in her presence. PW2 Sewa Singh stated that he did not know whether plaintiff and Harbhajan Kaur had paid rent or not. PW1 Harbhajan Kaur and PW2 Sewa Singh had admitted that they did not pay any rent to any one.

(iii) The trial Court further took note of the fact that Gurbachan Singh is living in USA since 1991 and he himself is not cultivating the suit land.

(iv) Even though in khasra girdawari from kharif 1988 to Rabi 1993, the plaintiff Gurbachan Singh was recorded to be in possession of the suit land as tenant at Will on 1/3rd batai from kharif 1988 but entries in khasra girdawari were changed in favour of the plaintiff Gurbachan Singh from kharif 1988 vide report No.63 dated 17.10.1988 but that was not as per procedure prescribed under rules. Therefore, entries in khasra girdawari in favour of the plaintiff Gurbachan Singh could not be taken to have been made as per rules and rather those are illegal, null and void.

16. As a result of all those facts since the plaintiff was not proved as owner of the suit land as tenant at Will on 1/3rd batai, he was not

entitled to relief of permanent injunction and the suit filed by him not only dismissed with costs but with special costs.

17. The said judgment and decree were affirmed by learned Additional District Judge, Hisar. The judgment passed by Additional District Judge, Hisar also does not appear to be suffering from any illegality or infirmity.

18. Permanent injunction dealt with by Section 38 of the Specific Relief Act, 1963 is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

19. Furthermore, the plaintiff in this case has straightway filed a suit for grant of permanent injunction without challenging the judgment and decree said to have been suffered by proforma defendants No.2 and 3 in favour of defendant No.1 and mutation sanctioned on its basis and then seeking a decree for permanent injunction as a consequential relief.

20. As regards the judgments i.e. **A.Subramanian & Anr. Versus R.Pannerselvam, 2021(1) RCR(Civil)902, Biswanath Agarwalla Versus Sabitri Bera & Ors., 2009(4) RCR(Civil) 1, Swaran Singh**

Versus State of Punjab, 1994(2) RRR 232, Hans Raj and another
Versus Bhagwan Dass and another, 2019(4) PLR 229, Shanti Sarup
Versus Baldeva, 1986 RRR 74 and *Gurdial Singh Versus Ajmer Singh,*
1987 RRR 25 referred to by learned counsel for the appellant in support of his contention, those are not applicable to the present case due to different facts and circumstances and the contest in which such observations had been made.

21. With the concurrent findings recorded by the Courts below with which I do not see any reason to disagree and with no substantial question of law arises, the present appeal is bound to be dismissed.

It is ordered accordingly.

Since the main regular appeal stands dismissed, the status quo order dated 27.9.1999 stand vacated and the miscellaneous application(s), if any, pending in the appeal stand disposed of accordingly.

16.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No