

CR-4510-2022

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4510-2022

Date of Decision: July 04, 2023

Keshav Sanghi and others

...Petitioners

Versus

Manoj Kumar Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sanjay Mittal, Advocate,
for the petitioners.

Mr. A.K. Khunger, Advocate,
for respondent No. 1.

None for respondent No. 2.

SANJAY VASHISTH, J.

1. Present revision petition has been directed against the order dated 06.09.2022 (Annexure P-9), passed by the Court of Additional Civil Judge (Senior Division), Narnaul, whereby review application, under Order XLVII Rule 1 read with Section 151 CPC, filed by respondent No. 1/plaintiff, seeking review of the order dated 09.03.2022 (Annexure P-6), was partly allowed enabling respondent No. 1/plaintiff to lead additional evidence to the extent of examining the vendors, who executed the sale deed (Ex. PW-6/A) in favour of defendants/petitioners.

2. Factual matrix of the case is that respondent No. 1/plaintiff – Manoj Kumar Sharma instituted a suit for permanent injunction against (i) Keshav Sanghi, (ii) Deepak Sanghi, (iii) Smt. Neeru Sanghi and (iv) Gopal

CR-4510-2022

2

Krishan Sanghi, claiming that the suit property is comprised in Khasra No. 6189 of the town plan register and site plan of the Municipal Council, Narnaul. It is further averred that his father Shri Ratiram Sharma son of Phool Chand Sharma, was owner of the suit property and used to reside there with his family. After sometime, Shri Ratiram Sharma had shifted to Bhiwani and subsequently expired on 25.11.2009. Thus, it is claimed that after death of Shri Ratiram Sharma, respondent No. 1/plaintiff and his family members are in exclusive possession of the suit property and the defendants have no right, title or interest over the suit property. It has also been averred in the plaint that since the suit property was in dilapidated condition, plaintiff demolished the same and after construction of a boundary wall, got installed a gate. When plaintiff was cleaning the property after demolition, defendants came to the spot and started quarrelling with him. When plaintiff stated that it is his ancestral property, defendants did not listen to him and started threatening him. Hence, the suit for restraining the defendants from interfering in ownership and possession of the plaintiff, over the suit property was filed.

3. In the written statement, defendants (petitioners herein) took a specific stand that suit property was purchased by them vide Sale Deed No. 2835, dated 21.06.2017, from Laxminarayan son of Ganeshilal Sharma son of Shivlal, and Opendar Kumar Sharma son of Kishori Lal Sharma son of Ganeshi Lal Sharma, for a sum of Rs.12,71,000/-, and since the date of purchase, they are in possession of the suit property. It was further contended by the defendants that after purchasing the suit property, they demolished the

CR-4510-2022

3

old construction and constructed a boundary wall thereon, apart from installing two gates over there.

4. After completion of pleadings, learned Trial Court framed total eight issues, which are:-

- “1. Whether the plaintiff is entitled for decree of permanent injunction on the ground as mentioned in the plaint? OPP
- 2. Whether the plaintiff has not come to the court with clean hands and concealed the true and material facts from the Court? OPD
- 3. Whether the suit is not maintainable in the present form? OPD
- 4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
- 5. Whether the plaintiff has not affixed proper court fee? OPD
- 6. Whether the present suit is time barred? OPD
- 7. Whether the present suit is bad for mis-joinder and non-joinder of necessary parties? OPD
- 8. Relief.”

5. After leading of evidence by both the sides, learned Trial Court dismissed the suit filed by respondent No. 1/plaintiff, vide judgment dated 24.09.2019 (Annexure P-1), primarily by holding that the plaintiff has failed to establish his possession over the suit property at the time of filing of the suit. The relevant portions of the findings recorded by the Trial Court while deciding aforementioned issues says as under:-

“ISSUE NO. 1

XXX XXX XXX XXX XXX

CR-4510-2022

4

XXX XXX XXX XXX XXX

Since, a suit for permanent injunction is based on possession and since the plaintiff has failed to establish his possession over the suit property at the time of filing the suit, he is not entitled to be relief permanent injunction. Accordingly, issue no.1 is hereby decided against the plaintiffs.

Issue Nos. 2 to 7

XXX XXX XXX XXX XXX
XXX XXX XXX XXX XXX

Issue No. 8

RELIEF

18. In view of my finding on the aforesaid issues, the suit of the plaintiff is hereby dismissed with cost. Decree sheet be prepared accordingly and file after due compliance be consigned to the record room.

*Announced in open court
Dated: 24.09.2019*

*Ashok Kumar-III
Addl. Civil Judge (Sr. Divn.)
Narnaul”*

6. In the appeal filed by respondent No. 1/plaintiff before the Court of Additional District Judge, Narnaul, it was observed that the Trial Court failed in properly evaluating the evidence of the parties to the suit and lastly by setting aside the judgment and decree dated 24.09.2019, passed by the Trial Court, the appeal was allowed, and the matter was remanded back to the Trial Court for a fresh decision, vide order dated 14.12.2021 (Annexure P-2). Relevant findings recorded in para Nos. 16 to 19 of the judgment dated 14.12.2021, are as under:-

“16. The ownership over khasra no. 6189 is being claimed by the plaintiff on the basis of Municipal record Ex. PW5/A whereas its ownership has also been claimed by the defendants on the basis of sale deed Ex. DW6/A but the defendants have failed to prove the ownership of their vendors over this khasra number. So, in the absence of cogent evidence, it appears to this court that the vendors of the defendants were not competent to execute the sale deed regarding this khasra number in favour of the defendants but this fact has been overlooked by the trial court.

17. The trial court has not taken the notice of the fact that the defendants did not examine the vendors who executed the sale deed Ex. PW6/A in favour of the defendants regarding the suit property including khasra No. 6189. Had they been appeared in the witness box, the picture would have been more cleared as to how and when they became the owners of the property falling in khasra no. 6189 but the best evidence has been withheld by the defendants. However, the trial court did not appreciate this issue also.

18. So, in the opinion of this court, the trial court did not properly evaluate the evidence of the parties to the suit prior rendering the impugned judgment thereunder resulting to cause miscarriage of justice.

*19. Moreover, on one hand, issue no.1 has been decided by the trial court against the plaintiff whereas no finding had been rendered by the trial court on issues no. 2 to 7 but the same had been collectively decided by the trial court against the defendants holding that these issues have not been pressed. Issues No. 2 to 7 are included issues No. 2 to 4 which relate to the fact whether the plaintiff has not come to the court with clean hands and whether the suit of the plaintiff is not maintainable in the present form and whether the plaintiff has no cause of action and locus standi to file the present suit. When these issues have been decided against the defendants, it contrary shows that the suit of the plaintiff is maintainable for which he has locus standi and cause of action and he did not conceal any fact from the court but consequent upon the decision on these issues against the defendants no relief had been given to the plaintiff because the entire decision of the trial court revolves around issue no.1 which had not been properly decided. Therefore, the trial court committed grave error while not giving findings on each and every issue after due evaluation of the evidence of the parties to the suit whereas **Order 20 Rule 5 CPC** contemplates that **“In suits in which issues have been framed, the***

court shall state its finding or decision, with the reasons there for, upon each separate issues, unless the finding upon any one or more of the issues is sufficient for the decision of the suit”.”

7. Remand order dated 14.12.2021 (Annexure P-2), was assailed by the petitioners/defendants before this Court by filing second appeal against order, i.e. SAO-3-2022, which was dismissed on 07.02.2022 (Annexure P-3), by upholding the remand order passed by the Court of Additional District Judge, Narnaul. However, while deciding SAO-3-2022, this Court noticed a little about manner of deciding the suit proceedings by the Trial Court. Relevant and concluding paragraph Nos. 7, 8 and 9 of the order dated 07.02.2022 (Annexure P-3), passed by this Court in SAO-3-2022, reads as under:-

“7. While remanding the case back, the First Appellate Court has made certain observations. Once the matter has been remanded back, the trial Court is expected to decide the case on merits while keeping in view the entire facts and circumstances of the case, independent of the observations made by the First Appellate Court.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the judgment passed by the First Appellate Court. Consequently, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.”

8. After about a week, on 15.02.2022, respondent No. 1/plaintiff moved an application (Annexure P-4) before the Court of Additional Civil Judge (Senior Division), Narnaul, to grant him permission to prove the documentary evidence such as school record & driving licences, as also to prove illegal construction of the defendants, and to summon the vendors of the

CR-4510-2022

7

defendants as witnesses.

Prayer made in the said application was opposed by the petitioners/defendants by filing a separate reply (Annexure P-5).

Said application was dismissed vide order dated 09.03.2022 (Annexure P-6), passed by the Court of Ms. Neha Goyal, Additional Civil Judge (Senior Division), Narnaul, by making specific observation in paragraph No. 6 of the order, as under:-

“6. After hearing the rival contentions of Ld. Counsel for both the parties and after going through the evidence produced on record, this Court is of the considered view that the present application deserves to be dismissed for the reason that by way of filing the present application plaintiff wants to prove his school record, driving licence, photographs of illegal construction raised by the defendants after order dated 14.12.2021 and also wants to summon vendors of the defendant and concerned Clerk DHVPN, Narnaul alongwith the record. In the application, he has contended that despite passing of status quo order regarding the suit property by Ld. Appellate Court on 14.12.2021, the defendant has taken electricity connection on 18.12.2021 despite the fact that DW-1, Om Parkash had given his statement on 22.02.2019 to the effect that electricity connection had already been installed in disputed property vide CCID No. 0331 dated 22.06.1966 and despite status quo order the defendants have again taken electricity connection on 18.12.2021 which is clear cut violation of the status quo order regarding suit property passed by Ld. Appellate Court. Hence, the present application for additional evidence has been moved. However, in this regard, this Court is of the considered view that if the defendants have violated the status quo order passed by Ld. Appellate Court in that case the appropriate remedy available to the plaintiff is to file contempt petition against the defendants for alleged violation of order dated 14.12.2021 instead of moving application for additional evidence in this case. Applicant/plaintiff is having alternative remedy available with him to file contempt petition in violation of order dated 14.12.2021 but instead of doing so the applicant/plaintiff has moved the present application which is devoid of merits and deserves to be dismissed. Hence, in view of the above-discussion, this Court does not find any ground to allow the present application and the same is hereby dismissed

and disposed off accordingly.

Now to come up on 06.04.2022 for arguments.

*(Neha Goyal)
ACJ(SD), Narnaul
UID No HR-0359
09.03.2022”*

9. Subsequently, one application dated 06.04.2022 (Annexure P-7), under Order XLVII Rule 1 read with Section 151 CPC, was moved by respondent No. 1/plaintiff, for reviewing of the order dated 09.03.2022 (Annexure P-6), passed by the then Civil Judge (Senior Division), Narnaul.

After filing reply (Annexure P-8) by the petitioners/defendants, review application was allowed by the Court of Ms. Kirti Jain, Additional Civil Judge (Senior Division), Narnaul, vide impugned order dated 06.09.2022 (Annexure P-9).

Hence, the petitioners/defendants are before this Court by way of present revision petition.

10. Mr. Sanjay Mittal, learned counsel for the petitioners/defendants, made a very short submission that respondent No. 1/plaintiff was required to file revision petition before the High Court against the order dated 09.03.2022 (Annexure P-6), vide which his application (Annexure P-4), for adducing additional evidence was dismissed, if at all so advised. Thus, the review application filed by respondent No. 1/plaintiff was not maintainable, rather same was misconceived.

Secondly, referring to the order dated 07.02.2022 (Annexure P-3),

CR-4510-2022

9

passed by this Court in SAO-3-2022, learned counsel for the petitioners submits that learned Trial Judge while passing impugned order dated 06.09.2022 (Annexure P-9), has failed in taking care of the expectation of the High Court, not to get influenced with the observations made by the First Appellate Court in its order dated 14.12.2021 (Annexure P-2), which was passed in the appeal filed by respondent No. 1/plaintiff against judgment and decree dated 24.09.2019 (Annexure P-1), initially passed by the Trial Court dismissing his suit.

11. In response, Mr. A.K. Khunger, learned counsel for respondent No. 1/plaintiff, submits that there is no error in the impugned order, inasmuch as, learned Court below was vested with the power to review its own order, in the interest of justice, and for the purposes of proper adjudication of the suit. Thus, he defends the action of respondent No. 1/plaintiff of not filing of revision petition before this Court against the order by which application filed by him was dismissed.

12. I have considered the submissions and examined the complete record available before me.

13. In the order dated 07.02.2022 (Annexure P-3), passed by this Court in SAO-3-2022, there is a reasonable and legitimate expectation from the Trial Judge to not to get influenced/impressed by the observations made by the First Appellate Court in the order dated 14.12.2021 (Annexure P-2). Only a week thereafter, an application was moved by respondent No. 1/plaintiff seeking permission to prove documentary evidence, including summoning of

vendors of the defendants as witnesses. It would not be out of place to mention that already in paragraph Nos. 16 and 17 of the remand order dated 14.12.2021 (Annexure P-2), there was a specific observation by the Court of Additional District Judge, Narnaul, in regard to the competency and non-competency of the execution of sale deed in favour of the petitioners/defendants and overlooking of the said aspect, by the Trial Court. Thus, undoubtedly, the application was moved by respondent No. 1/plaintiff taking a specific note of the observation made by the First Appellate Court in its remand order dated 14.12.2021 (Annexure P-2). However, said plea was not accepted and the application was dismissed vide order dated 09.03.2022 (Annexure P-6).

14. Thereafter, another application dated 06.04.2022 (Annexure P-7), under Order XLVII Rule 1 read with Section 151 CPC, was filed by respondent No. 1/plaintiff, specifically mentioning the observation made by the First Appellate Court of Additional District Judge, Narnaul, and taking note of the said part, in paragraph No. 5 of the impugned order dated 06.09.2022 (Annexure P-9), the review application was allowed, to the extent of granting permission to lead additional evidence on behalf of the plaintiff, i.e. examining vendors who executed the sale deed (Ex. PW6/A), in favour of the defendants.

In the very first line of para No. 5 of the impugned order, Trial Judge broadly notices the specific observations made by Additional District Judge, Narnaul, in its remand order dated 14.12.2021.

Thus, taking note of all the aspects and specific order dated 07.02.2022, passed by this Court in SAO-3-2022, whereby reasonable and

CR-4510-2022

11

legitimate expectation was expressed, which has not been taken care of while passing impugned order, I am of the view that review application under Order XLVII Rule 1 read with Section 151 CPC, was required to be dismissed or if at all the proposed evidence was considered necessary to be adduced, for just decision of the case, in the interest of justice, Trial Court could have made its independent observations/findings, without noticing or getting impressed with the observation made by the Court of Additional District Judge, Narnaul.

Thus, considering all the aspects and the reasons recorded here-above, **present revision petition is allowed**, and the impugned order dated 06.09.2022 (Annexure P-9), passed by Additional Civil Judge (Senior Division), Narnaul, is **set aside**.

However, it will be open for respondent No. 1/plaintiff, to challenge order dated 09.03.2022 (Annexure P-6), vide which the application filed by him was dismissed, in accordance with law, if so advised.

Civil revision petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

July 04, 2023

Pk Kapoor

Whether Speaking/Reasoned: YES/NO
Whether Reportable: YES/NO