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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 02, 2023

Sukhraj Singh

....Appellant

versus

Ranjha Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashok Kumar Khunger, Advocate for appellant.

Mr. Sandeep Jasuja, Advocate for respondents No.3 and 4.

None for respondent No.1.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant/plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 18.10.2011, as upheld by learned First Appellate Court vide its judgment and decree dated 12.09.2014, whereby suit filed by plaintiff was dismissed. He had sought therein, *inter alia*, a decree for declaration to the effect that notwithstanding anything contained to the contrary in the revenue record or any other deed of title and the passing of any Civil court decree dated 25.11.2013 and later on amended vide order dated 17.2.2014 and further on 2.8.2014 in civil suit bearing No. 178-1 of 26.8.2000 titled as 'Hukam Singh etc. Vs. Ranjha Singh' suit for declaration on the basis of compromise arrived at in between the defendant No. 1 and 2 on 13.9.2013 in the said civil suit the plaintiff is the owner of land measuring 27 Kanals 18 Marlas (as fully detailed in head note of the plaint) and the aforesaid compromise and subsequently the civil court decree by virtue of which defendant No.2 has been declared to be the owner in possession of the land mentioned above alongwith other

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land are illegal, null and void, with consequential relief of permanent injunction restraining defendant No.2 from getting the mutation entered in his name and from alienating the suit land in favour of anybody in any manner on the basis of said civil court decree.

3. Briefly stated, facts, as noticed by learned trial Court, are as below:

“2. It is the case of the plaintiff that he is owner of land measuring 27 Kanals 18 marlas (i.e. suit land) having purchased the same from defendant No. 1 through his duly appointed attorney namely Amarjit Kaur vide registered sale deed dated 22.10.2001 bearing Wasika No. 3809 for valuable consideration and mutation on the basis of sale deed has already been entered and sanctioned in the name of the plaintiff in the revenue record. That the clouds caste upon the rights of the plaintiff when after becoming the owner of the suit land, the plaintiff demanded his share of batai from the defendants No.3 & 4, who were and are in possession of the suit land as tenant on payment of 1/3rd share of batai, but they refused to pay the same. Ultimately, the plaintiff filed a suit for recovery of his share of batai against the defendants No.3 and 4 in the court of learned SDM-cum-Collector, Fazilka, wherein the defendants No.3 and 4 put in their appearance and raised objection that the plaintiff is not the owner of the land in suit, rather their father is owner of the suit land alongwith other land and the suit land is in their possession in their own right and the suit of the plaintiff was dismissed. That on coming to know about the same, the plaintiff started making enquiries and come to know that the defendant No. 1 is very clever person because after selling the suit land in favour of the plaintiff in order to cause wrongful loss to the plaintiff and wrongful gain to the defendants No.2 to 4, who are his brother and nephews had entered into a compromise with the defendant No.1 in a civil suit already filed by the defendant No.2 and others against the defendant No. 1 for declaration bearing civil suit No. 178-1 of 26.8.2000, on 13.9.2003 and later on succeeded in obtaining civil court decree on 25.11.2003 which was later on amended on 17.2.2004 and further on 2.8.2004 by virtue of which the defendant No. 1 got declared the defendant No.2 to be the owner in possession of the suit land alongwith other land also.

xx xx xx”

4. Upon notice, LR's of defendant No.1, defendants No.2 to 4 filed their separate written statements raising certain pleas and prayed for dismissal of the suit of the plaintiff.

5. Based on the rival pleadings, following issues were framed:

“1. Whether plaintiff is entitled to declaration as prayed for? OPP

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2. *Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
3. *Whether suit of the plaintiff is not maintainable? OPD*
4. *Whether suit of the plaintiff is time barred? OPD*
5. *Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD*
6. *Whether plaintiff has concealed material facts from the court, if so, its effect? OPD*
7. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 3 against plaintiff. Issues No.4 and 6 were decided against defendants. Consequently, suit filed by plaintiff was dismissed.

8. Feeling aggrieved against the said judgment and decree dated 18.10.2011, appellant-plaintiff preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“14. *Learned Trial court has dismissed the suit of the appellant - plaintiff mainly on the ground while deciding issues no.3 that the suit of the plaintiff is not maintainable because the plaintiff has not sought the relief of possession of the suit land as the plaintiff has filed simple suit for declaration and permanent injunction. Therefore, the suit is not maintainable.*

15. *As regard the maintainability of the present suit is concerned, the plaintiff has filed the suit for declaration and for permanent injunction only and has not claimed the relief of possession of the sit land and it is also come in the pleading of the plaintiff himself in para No.2 of the plaint that after becoming owner of the suit land he demanded his share of Batai from defendants no.3 and 4, who are in possession of the suit land as tenant on payment of 1/3rd share of Batai. Meaning thereby, as per own pleadings of the plaintiff himself admitted that he was not in possession of the suit land at any time whereas he has not claimed relief of possession along with other relief. So in view of the provisions of Section 34 and 41(h) of the Specific Relief Act, 1963, the suit is not maintainable. In the is regard the learned Lower court has relied upon the decided case 2011(1) Law Harald (P& HG) 549, Devi Lal Versus Shokaran & Anr., wherein it has been held by the Hon'ble High Court that “*

“B. Specific Relief Act 1963, Ss.34 & 41(h)- Declaratory suit- Maintainability- Plaintiff being out of possession of the suit land could not maintain a simple suit for declaration and permanent injunction only and should have also claimed relief of possession of the suit land- Suit for declaration and permanent injunction only is not maintainable in view of the mandatory provision of proviso to Section 34 and 41(h) of the Act.”

16. *Therefore, the suit of the plaintiff is not maintainable and the as such the learned Trial court has rightly decided issue no.3 against the plaintiff and in favour of the defendants and as such the findings of learned Trial Court are as per the law and facts. Hence, considering all the facts and circumstances of the case, this court come to the conclusion that the there is no illegality in the findings returned by the learned Trial court in dismissing the suit as the same are neither erroneous nor illegal.”*

11. Section 34 read with Section 41(h) of the Specific Relief Act, 1963 (for short ‘Act’) read thus:-

“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.”

41. Injunction when refused.—An injunction cannot be granted—

xx xx xx

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;”

11.1. Perusal of above shows that plaintiff being out of possession of the suit land could not maintain a simple suit for declaration and permanent injunction only and should have also claimed relief of possession of the suit land. Reference may also be had to decision rendered by the Supreme Court in **Devi Lal versus Sh. Okaran and another**, reported as **2011 (1) Law Herald (P&HG) 549**, wherein, it has been held as under-

“B. Specific Relief Act 1963, Ss. 34 & 41(h) – Declaratory suit-Maintainability- Plaintiff being out of possession of the suit land could not maintain a simple suit for declaration and permanent injunction only and should have also claimed relief of possession of the suit land-Suit for

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declaration and permanent injunction only is not maintainable in view of the mandatory provision of proviso to Section 34 and 41(h) of the Act.”

12. At this stage, learned counsel for appellant-plaintiff, submits that appellant-plaintiff may be granted an opportunity to amend his plaint.
13. Learned counsel for respondents No.3 and 4 also agrees and submits that he has no objection in case appellant-plaintiff is afforded one opportunity to amend his plaint in terms of aforesaid Sections.
14. In the premise, with the consent of both sides, impugned judgments/ decrees passed by both learned Courts below are set aside and the matter is remanded to learned trial Court for fresh consideration. Appellant-plaintiff is granted an opportunity to file appropriate application to amend his plaint. Learned trial Court is requested to decide the application for amendment of the plaint and proceed further to pass a fresh judgment in accordance with law. Parties to remain present before learned trial Court on 04.07.2023.
15. Disposed of, accordingly.
16. Pending application(s), if any, including CM-14362-C-2019 seeking to implead legal heirs of respondent No.2, shall also stand disposed of.
17. No order as to costs.

(ARUN MONGA)
JUDGE

May 02, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No