

Sr. No.238

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

RSA-6687-2016 (O&M)

Date of decision: 17.05.2023

Ramesh

...Appellant

Vs.

Rohtash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Appellant in person.

Mr. Hardeep Singh Poonia, Advocate
for Mr. Rajesh K. Sheoran, Advocate
for respondent No.6.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before Ld. Trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff (appellant herein) is in second appeal before this Court assailing Ld. Trial Court judgment and decree dated 16.11.2023, as upheld by Ld. First Appellate Court vide its judgment and decree dated 25.05.2016, dismissing the suit for permanent injunction filed by plaintiff/appellant restraining defendant/respondents No.1 to 5 from entering in any manner into the peaceful possession of plaintiff over the suit property.

3. Succinct facts first. The plaintiff/appellant pleads himself to be the owner and in possession of the suit land. He has constructed boundary walls and a kotha (a small dwelling) on the land. The plaintiff uses the property for domestic purposes, including keeping cattle. The defendants have no rights, title, or interest in the property, and the plaintiff's possession has been uninterrupted and free from

interference by anyone, including the defendants. The plaintiff further alleges that the defendants are determined individuals who seek to forcefully and illegally dispossess the plaintiff from the suit property. Therefore, the plaintiff has filed this civil suit to protect their rights and seek legal recourse.

3.1. Upon notice, defendant No. 2 filed a written statement raising preliminary objections regarding the non-maintainability of the suit, lack of cause of action, absence of *locus standi*, and failure to approach the court with clean hands. On merits, dismissal of suit was sought as the plaintiff had previously also filed a suit for permanent injunction (No. 313 of 1999/2003) on 29.07.1999 against Smt. Shakuntla, wife of Sham Phuland which was dismissed on 25.09.2006. Plaintiff was not in possession of the suit property before or at the time of filing the present suit, making the suit non-maintainable. It is pleaded in written statement that suit property was actually owned by the Municipal Council, Sonapat, and the plaintiff had manipulated incorrect revenue entries in collusion with the Halqa Patwari. The previous courts had rejected these claims and held that the plaintiff was neither the owner nor in possession of the suit property. The defendant alleged that the plaintiff obtained the previous decree, sought to be relied by him, through collusion with the defendant in that suit. They were thus not bound by the previous judgment as they were not a party to that suit. Additionally, the defendant pointed out a discrepancy in the area of the suit property provided by the plaintiff. According to the revenue records, the disputed plot's area was 1K-0M (605 square yards), whereas the plaintiff claimed it to be 436 square yards or 14½ Marlas. The defendant argued that the plaintiff failed to explain this inconsistency. Defendants No. 4 & 5 adopted the written statement already filed on behalf of defendant No.2.

3.2. Replication was also filed by plaintiff, reiterating the pleas of the plaintiff.

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

1. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has not come to the court with clean hands and has suppressed the true material facts from the court? OPD
6. Relief.

5. 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*.

6. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided against plaintiff and in favour of defendants and rest of the issues were disposed of being not pressed and consequently, the suit of plaintiff was dismissed vide impugned judgment and decree dated 16.11.2013.

7. Aggrieved, plaintiff-appellant preferred first appeal, which was dismissed by Ld. First Appellate Court vide impugned judgment and decree dated 25.05.2016, resulting in instant Regular Second Appeal before this Court.

8. The gravamen of the contentions of appellant, who is present in person, is that he is in possession of suit property and respondents have no concern, whatsoever, with the same. Therefore, his suit for permanent injunction

for restraining respondents No.1 to 5 from interfering in any manner into the peaceful possession of appellant ought to have been decreed.

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

“XXXX XXXX XXXX XXXX

16. So far as the documentary evidence is concerned, Ex P1 is certified copy of the judgment dated 27.3.1991 passed in civil suit titled as Ramesh vs Bhaiya Ram and others. After going through the judgment Ex P1 the said suit was filed by some other persons and as the said suit was not filed against the defendants and, therefore, defendants are not bound by the judgment Ex P1 dated 27.3.1991. Even otherwise as per judgment Ex P1 Ramesh and Jai Ram claimed themselves to be the owners of the disputed plot on the ground that the said plot is their ancestral property. But in the present case plaintiff has not claimed the property in question as his ancestral property. As per revenue record Ex P3 filed by the plaintiff, the suit property is owned by municipal council Sonapat. In view of the jamabandi Ex P3 filed by the plaintiff himself, it is clear that suit property is not the ancestral property of the plaintiff as claimed by him in the earlier suit titled as Ramesh vs Bhaya Ram etc decided on 27.3.1991 vide Ex Pl. As per jamabandi Ex P3 plaintiff is shown to be in possession over the suit land. Ex P4 is copy of khasra girdawari and as per khasra girdawari Ex P4 defendant no 5 Shakuntla alongwith Ramesh are shown to be in possession over the property in question. Ex P6 is jamabandi for the year 1986-87 and as per jamabandi Ex. P6 Shakuntla is shown as gair marusi over khasra no.52/7/1. Some entries are repeated in the jamabandi Ex P7 for the year 1991-92.

17. The plaintiff has sought permanent injunction against the defendants on the ground of ownership. As per the jamabandies Ex 3 to Ex P7 Municipal Council Sonapat is owner of the suit land and therefore, Municipal Council Sonapat was necessary party in the present suit. Without impleading municipal council as party, plaintiff is not entitled to get injunction, on the ground of ownership over the suit property.

18. Ex D1 is the copy of the judgment passed in appeal titled as Ramesh vs Shakuntla' decided on 11.9.2007 and as per judgment Ex.D1 suit titled as Ramesh vs Shakuntla etc was dismissed by Sh Najar Singh the then Ld. CJ (SD), Sonapat and the appeal preferred by Ramesh was also dismissed. After going through the judgment Ex D1 it is clear that revenue entries showing the plaintiff to be in possession over the suit land were found suspicious entries. As such plaintiff cannot take any benefit on the basis of the revenue

entries showing him to be in possession over the suit land. Vide Ex. D3 appeal preferred by the plaintiff before the Hon'ble High Court was also dismissed. In these circumstances it is clear that plaintiff failed to prove his ownership as well as possession over the suit land and as such plaintiff is not entitled to get injunction against the defendant and accordingly finding of the ld. trial court are hereby affirmed.

19. In view of my above discussion, there is no illegality or infirmity in the judgment and decree passed by the ld, trial court and therefore, present appeal is hereby dismissed with no order as to costs.

xxxx xxxx xxxx xxxx ”

10. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

11. Even otherwise, no fault can be found with the findings rendered by Ld. Trial Court, as affirmed by learned First Appellate Court, since the same were based on cogent evidence adduced by both the parties. I am thus inclined to agree with the view in this behalf taken by learned Courts below.

12. No new arguments have been raised by appellant other than reiteration of the stand taken before learned Courts below.

13. In fact, in course of hearing before this court, on a query put to him, appellant concedes that he is not the owner of the suit property, but merely is in possession thereof for which protection is sought that he be not evicted except in due course of law. However, on the basis of evidence adduced before Ld. Courts below it stands proved that he is not even in possession of suit property. The question of thus decreeing his suit for permanent injunction does not arise at all.

14. In the premise, there seems to be no mis-appreciation of the evidence or perversity or illegality in the concurrent findings of facts returned by

the Courts below. No interference is thus called for to disturb the said concurrent findings.

15. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

May 17, 2023
ashish

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