

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

RSA-2145-2017 (O&M)

Date of decision: 23.01.2023

Dev Ram

...Appellant

Vs.

Swarna Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.P. Soi, Advocate &
Mr. Sonal Soi, Advocate
for the appellant.

Mr. Rahul Garg, Advocate
for Mr. Naveen Batra, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before learned Trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 24.11.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 06.12.2016.

3. Briefly stated, facts as noticed by Courts below are that plaintiff had filed a suit for permanent injunction to the effect that defendants may be permanently restrained from, in any manner, interfering and dispossessing the plaintiff from the house constructed over the land measuring 0 Kanal 5 Marlas, bearing Khata No.684/631, Khatauni No.812/1, Khasra No.202, as entered in Jamabandi for the year 2007-2008, Hadbast No.20, situated in the area of Village Behram, Tehsil Nawanshahr, District SBS Nagar. As per

plaintiff, earlier Prema son of Tamba, real uncle of plaintiff, was owner in possession of the suit property. Said Prema was residing with plaintiff till his death in the house in question.

3.1. Plaintiff further averred that he is in actual and physical possession of the house in dispute for the last more than 20 years. Further defendant No.1 is hot headed and lawless person, who was Technical and Social Welfare Minister, Punjab and defendant No.2-SHO was also dancing to the tune of defendant No.1 and both defendants were threatening to alienate or transfer the house in question to anybody else.

4. Upon notice, defendants appeared and defendant No.1 filed written statement taking preliminary objections of maintainability and estoppel. However, the suit was dismissed as withdrawn qua defendant No.2-SHO.

4.1. Defendant No.1 admitted that said Prema was real uncle of plaintiff. However, it was pleaded that he (Prema) was also the real uncle of defendant No.1 and had given the suit property to defendant No.1 in lieu of services being rendered by him as Chowkidar and defendant No.1 and his family members assisted Prema to construct a house and defendant No.1 along with his family members started living with him. Even the electricity connection had already been installed in the name of defendant No.1. A couple of preliminary objections were also raised.

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

1. Whether plaintiff is entitled to permanent injunction as prayed for? OPP.
2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the plaintiff is barred by his act and conduct to file the present suit? OPD.

4. 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, issues No.1 and 2 were decided against plaintiff and issue No.3 was decided in favour of defendant No.1. Consequently, the suit of plaintiff-appellant was dismissed.

8. Aggrieved, plaintiff-appellant preferred first appeal which was dismissed with costs by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Learned counsel for appellant strenuously argues that there is no bar for filing a suit for permanent injunction without seeking a prayer for declaration. To buttress his contentions, he relies on upon **Full Bench Judgment of the Supreme Court in *A. Subramanian and another vs. R. Pannerselvam, 2021 (1) R.C.R. (Civil) 902.***

10. I have heard learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant part of lower Court judgment, with which, *inter alia*, I am in agreement, is as below:-

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Furthermore, for seeking relief of permanent injunction, it was incumbent upon plaintiff to prove his possession over suit land. He though alleged that he is in exclusive possession over the property in dispute, but he has failed to tilt the scale of preponderance of

probability in his favour. As from the discussion made herein above, it has come on record that defendant Swarna Ram is also in possession of property in dispute. Furthermore, this fact has been concealed by the plaintiff at the time of filing of present suit. Relief of injunction is an equitable relief and any person who seeks equity must do equity and anyone who does not come to the court with clean hands is not entitled to discretionary relief of injunction. Moreover, even if the entire evidence of defendant is discarded, even then as per cardinal principle of law, plaintiff is to stand on his own legs and he cannot take benefit of deficiencies or lacunas in the case of defendant. Even if only evidence led by plaintiff is considered, even then plaintiff has failed to establish his exclusive possession over the property in dispute as alleged by him.

xxxx xxxx xxxx xxxx”

11. Moreover, learned First Appellate Court while re-appreciating the evidence, *inter alia*, gave valid reasons, as below:

“xxxx xxxxx xxxxx xxxxx

10. On careful appraisal of the evidence led before Id. Trial Court it emerges, without any dispute whatsoever, that it is plaintiff himself who has obliterated his case and that also without any scope of repair. He admitted, during his cross examination, that defendant no.1 was in possession of the suit property for the last more than 20 years and also conceded that photographs Ex. D-1 to Ex. D-6 show defendant and members of his family in possession of the suit property, even if he tried to qualify his statement by adding that these photographs were 20 years or more old. Just by placing on record photograph Ex. PX, showing a locked door and plaintiff standing outside that door admitting it to be of suit property, the plaintiff cannot claim himself to be in possession of the suit property. He is clicked just as standing in the street outside the suit property. Id. Trial Court has rightly observed that if plaintiff is in possession of suit property for the last more than 20 years, as claimed, it was not difficult for him to show to the Court any photograph depicting him to be in possession thereof. The plaintiff also conceded that electricity connection in the suit property was lying installed in the name of Swarna Ram and his version that electricity stands disconnected has been belied by the defendant by adducing into evidence Ex. D-9 and Ex. D-9/A, receipts issued in the year 2015 establishing working/ running electricity connection and consumption of electricity therefrom. Vide certificate Ex. D9/B Assistant Engineer, Punjab State Power Corporation Limited, Sub Division No.1, Behram has asserted that electricity connection no. PF 23/0128 in the name of Swarna Ram was operative, continuously.

11. *Just because Swarna Ram was having residences/houses in Phagwara, Chandigarh and Banga would not mean that his possession over suit property is not to be recognized especially when it is his assertion that presently Mohan Lal son of Swarna Ram is residing in the house in suit, being his son.*

12. *There is another admission on the part of plaintiff that he has purchased another house in the same vicinity and is residing there for the last more than 15 years. This being the situation, the plaintiff is further precluded from asserting himself to be in possession of the suit property.*

13. *As a last straw under his hat, Ld. Counsel for the appellant has prayed for excluding testimony of DW-1, Mohan Lal from consideration as an attorney cannot depose on behalf of the principal. Without going much into this part of the controversy, since it was always for the plaintiff to prove his case in the first instance, before asking the defendant to defend himself and as the law does not allow the plaintiff to derive any advantage from weakness of case of the defendant as held in PUDA v. M/s. Shiv Sarasvati Iron and Steel Re-rolling Mills 1998(2) CCC 30 and Ram Dass v. Saleem Ahmad 1999 (1) Judicial Reports 28, it was held and reiterated that plaintiff must fail or succeed on his own and cannot take advantage of weaknesses in the case of the defendant. Guided thus, it was always and always for the plaintiff to prove his case, as condition precedent before asking a decree in his favour and in view of discussion herein above, plaintiff is held to have remained unsuccessful in discharging onus probandi placed upon him and therefore, even if testimony of DW-1 Mohan Lal is excluded the plaintiff is in for no advantage. In the same context it is necessary to observe that DW-1 Mohan Lal is none else but son of Swarna Ram and it is case of Swarna Ram and as well as Mohan Lal, that it is the latter who is residing in the house in suit, as son of Swarna Ram and therefore, cannot be taken as altogether stranger.*

xxxx xxxx xxxx xxxx”

12. While there is no quibble on the proposition of law canvassed by learned counsel for appellant that there is no absolute bar for filing a suit for permanent injunction without seeking a prayer for declaration, however, given that appellant has himself *inter alia* admitted in his cross-examination that respondent was in possession of suit property for the last more than 20 years and that electricity connection installed in the suit property was also in

the name of respondent, learned Courts below have thus rightly non-suited

appellant/plaintiff. Facts of present case are clearly distinguishable from the facts of the case law referred to by learned counsel for appellant.

13. Further in my view the suit for permanent prohibitory injunction is not maintainable. The plaintiff has failed to prove his possession over suit property and his ownership is contested by defendant No.1. In this context, reference may also be had to Section 34 read with Section 38 (1) of the Specific Relief Act, 1963 (for short 'Act'). The same are extracted herein below:

“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.”

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38. Perpetual injunction when granted.—(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.”

14. From perusal of the above, even otherwise, it was required on the part of plaintiff-petitioner to have sought declaration of his title and possession also while seeking relief of injunction which is consequential benefit to the declaration.

15. Reference may also be had to Apex Court judgment dated 07.09.2021 rendered in CA Nos-5575-5576-2021 in case titled **Kayalulla**

Parambath Moidu Haji versus Namboodiyil Vinodan, wherein it is held that simpliciter suit for permanent injunction without seeking declaratory

relief *qua* the same is not maintainable, especially in a case where title of the suit property is disputed, as is the case herein. For ready reference, Paras-10 to 12 of the same are reproduced, as below:

“10. The short question that falls for consideration before us is:

Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?

11. The issue is no more res integra. The position has been crystalized by this Court in the case of Anathula Sudhakar (supra) in paragraph 21, which read thus:-

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiffs lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammol, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the

parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

12. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.”

16. Perusal of the above clearly reflects that without seeking relief *qua* the proprietary rights on the title of the suit property by way of declaration, plaintiff-petitioner is not entitled to any injunction.

17. There seems no 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. In this second appeal, no fresh ground worthy of interference is made out.

18. 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 41 of the Punjab

Courts Act read with Section 100 of Civil Procedure Code.

19. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
20. Pending application/s, if any, shall also stand disposed of.
21. No order as to costs.

(ARUN MONGA)
JUDGE

January 23, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No