

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

120

RSA-2075-2018

Date of Decision: 19.12.2023

Dalip Singh

....Appellant

Versus

Prem Singh and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Pankaj Bali, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the plaintiff against the concurrent findings of dismissal of civil suit.
2. Plaintiff-Dalip Singh filed a civil suit for declaration with consequential relief of permanent injunction praying therein a decree for declaration to the effect that Tatima prepared by the Halka Patwari is incorrect, therefore, same be cancelled and a corrected Tatima as per actual and factual position existing at the spot and Killa No.5 be divided as prayed in the suit.

Plaintiff claimed himself to be owner in possession of the agricultural land measuring 12 Kanala-10 Marla vide Khewat No.404/374, Khatoni No.731, rect. No.302, Killa No.1 (8-0), rect. No.303, Killa No.5/1(4-10), situated at Village Kachhwa, Tehsil and District Karnal vide Jamabandi for the year 2001-2002. The plaintiff claimed that he became the owner of this land by way of a civil Court

decree which was passed in favour of the plaintiff against Ballu son of Shankar in the year 1986 in civil suit No.697 dated 28.10.1986 and before this, Ballu was the owner of total land measuring 25K-0M vide Khewat No.246/228 min Khatoni No.521 rect. no.302, Killa No.1(8-0), 2(8-0), 3/1(2-0), rect No.303 Killa No.5(7-0) situated in Village Kachhwa, Tehsil and District Karnal vide Jamabandi for the year 1981-82.

3. Plaintiff also pleaded in the suit that in the earlier civil Court decree, he had been given specific numbers and same had also been agreed between the parties that they being in possession of the specific area be declared owner of the same i.e. suit land. Plaintiff claimed his possession towards the western side of the total land measuring 15K-0M. However, at the time of sanction of the mutation, Patwari Halka made the Tatima of the land wherein the portion of land which plaintiff is in possession and was earlier owned by Ballu, was ear marked in a vertical position. Thus, as per Revenue Records as well as Tatima, there is no *rasta* approachable to the field of the plaintiff.

4. Defendants filed their written statement and therein, it was pleaded in specific that the plaintiff was never in possession of the land, which is towards the western side of land measuring 15K-9M, and Tatima of the land has rightly been prepared by the Revenue Field Staff with the consent of the plaintiff after verifying the factual position prevailing over the spot.

5. After framing of the issues, vide order dated 05.01.2013, learned trial Court concluded that plaintiff was well aware of the entry of the Tatima at the time of preparation of Mutation and further, as per settled law, once, earlier suit had been dismissed in default under Order 9 Rule 8 C.P.C., then, fresh suit on the same fact is barred under Order 9 Rule 9 C.P.C.

For the sake of convenience, Paragraph No. 22 of the judgment passed by learned trial Court is reproduced herebelow”

'22.Thus, from the abovesaid discussion, it is clear that the plaintiff was well aware of the entry of the Tatima at the time of preparation of mutation and further, it is the settled law that when the earlier suit was dismissed in default under order 9 rule 8 CPC, then, fresh suit on the same fact is barred under Order 9 rule 9 CPC. Hence, this court is of the considered opinion that the plaintiff is not entitled to the relief of declaration along with consequential relief of permanent injunction as prayed for. Accordingly, both these issues are decided against the plaintiff and in favour of the defendants.'

6. When plaintiff took the issue again before the learned First Appellate Court, there also said findings were reiterated by the Appellate Court, rather the findings recorded by learned Appellate Court are more elaborative. Learned First Appellate Court held in categorical that the present suit is barred under Order 9 Rule 9 C.P.C. because earlier suit was dismissed in default under Order 9 Rule 8 C.P.C. It is also recorded that Tatima was prepared by the Halka Patwari by the consent of both the parties and mutation (Ex.P2) was rightly sanctioned on the opposite side of the Mutation.

The relevant findings recorded by learned First Appellate Court in paragraphs No. 12 to 15 are reproduced herebelow:

'12. On the other side, learned counsel for respondent- defendants has argued that the Tatima which was prepared by the Halqa Patwari after entering mutation on the basis of civil court decree has been rightly entered and sanctioned and plaintiff was well aware of this fact from the very beginning. The defendants are owners in possession of the land in question comprised in killa no. 5/2 and plaintiff has just concocted a false story in order to get the land of the defendants. Earlier suit was also filed by the plaintiff-appellant on the similar facts on 03.08.1998 which was dismissed under Order 9 Rule 8 CPC due to non appearance of the plaintiff, vide order dated 28.09.2006 and by that way the subsequent suit of the plaintiff is barred under the provisions of Order 9 rule 9 of CPC. So, it can be said that the trial court has not committed any mistake or illegality while dismissing the suit of the appellant- plaintiff so the present appeal of the appellant-plaintiff which is devoid of merits may kindly be dismissed. He relied upon the case law titled as Smt. Hiramani Swain Vs. Ramesh Chandra Senapati and others, 2001(3) Civil Court Cases, 486 (Orissa).

FINDINGS:

13. After hearing rival contentions raised by the counsel for both the parties and after perusing the judgment as well as ocular and documentary/evidence placed on the file, this court is of the view that there is specific admission on behalf of the PW1 in his cross-examination that earlier he had filed a civil suit against the defendant-respondents regarding the same property and even perusal of the copy of the plaint of the previous suit, proves that the plaintiff had filed a similar suit regarding same purpose against the defendants which was dismissed under Order 9 Rule 8 C.P.C. due to non-appearance of the plaintiff and suit of the plaintiff was dismissed on 29.08.2006 and order of the same is Ex.D7 in the original judgment.

14. It is evident from the record that Tazima was prepared by the Halqa Patwari with the consent of both the parties and mutation Ex.P2 was rightly sanctioned on the opposite side of the mutation. The land comprised in khewat no. 303 and killa no. 5/1 was entered in the name of appellant-plaintiff. Moreover, jamabandi Ex.P4 to Ex.P7 are proving that the plaintiff is owner in possession of the land comprised in khasra no. 302/1, khasra no. 303, killa no. 5/1 and by that way plaintiff is shown as owner of 12 kanals 0 marla.

15. It is settled proposition of law that if a suit is dismissed in default under Order rule 8 CPC then the fresh suit filed subsequently on the same

facts is barred under Order 9 Rule 9 of CPC. In view of the settled proposition the appellant-plaintiff was certainly not entitled to the relief of declaration alongwith subsequential relief of permanent injunction and trial court has considered each and every fact and that is why the finding over issues no.1 and 2 were returned by the trial court against the appellant-plaintiff because the plaintiff was not entitled to seek decree for declaration and plaintiff was also not entitled for seeking injunction against the defendant-respondents. So far as the findings of trial court which are perfect and legal require no interference at all and the finding of trial court that both the two issues are hereby upheld.'

7. During the course of arguments also, on being asked by the Court, counsel for the appellant makes an admission that factum of dismissal of the earlier suit is even missing in the plaint now filed by the plaintiff. Therefore, in view of the present situation, this Court also does not find any substantial reason to interfere with the well reasoned findings recorded by both the Courts below. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, **the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.**

December 19, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no