

RSA-2549 of 2018 (O&M)

2023:PHHC:131154

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

RSA-2549 of 2018 (O&M)
Date of decision: 09.10.2023

Gurdit Singh since deceased through LRs

.....Appellants

Versus

Kuldeep Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Pritam Saini, Advocate,
for the appellants.

NAMIT KUMAR, J.

CM-1790-C of 2020

1. This application has been filed by the applicant-appellant for placing on record order dated 20.05.2016 passed by the Court of learned Civil Judge (Senior Division), Ambala.

2. Allowed as prayed for.

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1. This Regular Second Appeal is directed against the order dated 20.05.2016 passed by the Court of learned Additional Civil Judge (Junior Division), Ambala, whereby application filed by the respondent-defendants under Order 7 Rule 11 CPC was allowed and plaint filed by plaintiff-Gurdit Singh was rejected as well as against the judgment and decree dated 15.07.2017 passed by the Court of learned

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District Judge, Ambala, whereby appeal filed by the plaintiff against the order dated 20.05.2016, has been dismissed.

2. Brief facts of the case are that plaintiff-Gurdit Singh filed a suit for permanent injunction restraining the defendants from interfering in the ownership and peaceful possession of the plaintiff over the land in dispute. It was averred that the plaintiff was owner in possession of the land shown in red colour in the site plan attached with the plaint, situated in Khasra Nos.67 and 68, Village Sohana, Tehsil Barara, District Ambala. He had got the land from his forefathers. Earlier a civil suit for declaration with consequential relief of permanent injunction titled as "Gurdit Singh vs. Bhajan Singh etc." had been filed by the plaintiff with respect to the land situated in Khasra Nos.132, 133 and 134, village Sohana, Tehsil Barara, District Ambala. During the pendency of the said suit, defendants no.1 and 2 purchased the land involved in that suit, vide a registered sale deed dated 10.06.1993 and became parties in that suit. The suit was ultimately decided on merits and was dismissed by the Court of learned Civil Judge (Junior Division), Ambala on 19.04.2006. An appeal was filed, which was also dismissed. Regular Second Appeal No.1483 of 2008 was also dismissed by this Court on 09.01.2009. It was averred that the defendants, who had allegedly purchased Khasra Nos. 132,133 and 134 during the pendency of that suit on 10.06.1993, started interfering in Khasra Nos.67 and 68 in the garb of the judgments in the suit referred to above. It was averred that the land in that suit was totally different, whereas the land in this suit was different. The defendants had no right,

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title or interest in the land in dispute in the present case and therefore, they could not interfere in the peaceful possession of the plaintiff over the same. It was averred that the plaintiff requested the defendants many times not to interfere in his possession but to no avail.

3. Defendants no. 1 and 2 resisted the suit by way of their written statement. Certain preliminary objections with regard to maintainability, *res judicata* etc. were raised. On merits, all averments were denied. It was stated that the plot in dispute was not situated in Khasra Nos.67 and 68 and that it was situated in Khasra Nos.132, 133 and 134 and litigation with regard to the same had already been finalized.

4. Defendants no.3 to 5 also filed their written statement on similar lines.

5. An application for injunction was also decided by trial court. Issues were framed on 13.02.2010 and evidence commenced.

6. Defendants filed an application under Order 7 Rule 11 CPC stating that since the matter had already been decided, the suit was barred by the principles of *res judicata*.

7. The application was resisted by plaintiff. It was averred that *res judicata* is a mixed question of law and facts and plaint cannot be rejected on the ground of *res judicata*.

8. The trial Court allowed the application filed by the defendants under Order 7 Rule 11 CPC and rejected the plaint vide order dated 20.05.2016.

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9. Aggrieved against the decision of learned trial Court, plaintiff preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 15.07.2017.

10. Learned counsel for the appellant contended that impugned order and the judgment rejecting the plaint of the appellant-plaintiff on the ground of *res judicata* are not sustainable in the eyes of law. He further contended that *res judicata* is a mixed question of law and facts and any suit cannot be dismissed summarily on the application of the defendant.

11. I have heard learned counsel for the appellant and perused the record.

12. The Court of first instance while rejecting the plaint observed as under: -

“5. A perusal of the judgment dated 03.05.2014 passed in civil suit no.382 dated 19.3.2010 titled as ‘Gurdit Singh Vs. Bhajan Singh & Ors.’ passed by the court of Ms. Rekha, then learned Civil Judge (Jr. Divn.), Ambala, reveals that the parties to that suit and to the present suit are similar. In the present suit, the plaintiff has sought the relief of permanent injunction restraining the defendants from interfering in his alleged ownership & possession over the suit property bearing Khasra nos.67 & 68 which falls within the abadi-deh of the Village Sohana, Tehsil Barara, District Ambala. The present suit property is similar property which was involved in the aforesaid civil suit decided vide the judgment dated 3.5.2014 by the court of Ms. Rekha, the then learned Civil Judge (Jr. Divn.), Ambala. It is worthwhile to mention here that vide the aforesaid judgment dated 3.5.2014, the aforesaid civil suit

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titled as 'Gurdit Singh Vs. Bhajan Singh & Ors.' was dismissed by Ms. Rekha, the then learned Civil Judge (Jr. Divn.), Ambala, specifically observing therein that matter in aforesaid suit already adjudicated vide a judgment dated 19.4.2006 passed by the court of the then learned Civil Judge (Jr. Divn.), Ambala, and further in appeal vide a judgment dated 21.4.2008 passed by the court of the then learned Additional District Judge (Fast Track), Ambala. Parties were not allowed to re-agitate the matter finally decided on merits. In the aforesaid judgment dated 19.4.2006, it was held by the then learned Civil Judge (Jr. Divn.), Ambala, that Gurdit-plaintiff in the aforesaid civil suit (plaintiff in the present suit also) is not owner in possession of the property and is not entitled to the relief of injunction. It is worthwhile to mention here that the property/land in dispute in the present suit falls in Khasra nos.67 & 68 and is the same property qua which the judgment dated 19.4.2006 was passed. As such, the principle of res-judicata shall operate which bars the plaintiff from filing the present suit. Accordingly, the application in hand is allowed and the plaint is, hereby, rejected. File be consigned to the record room after due compliance."

13. It is crystal clear that dispute raised in the present suit has already been adjudicated vide a judgment dated 19.4.2006 passed by the Court of the then learned Civil Judge (Junior Div), Ambala, holding that plaintiff-Gurdit Singh is not the owner in possession of the property in dispute, therefore, he is not entitled to relief of injunction. The appeal preferred by the plaintiff also stands dismissed. It is abundantly clear from the record that the proceedings with regard to the land in dispute have already been finalised upto this Court and the

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present suit instituted at the instance of plaintiff/appellant(s) was just to delay the matter deliberately. Moreover, plaint of the plaintiff was rejected by order of the Court of first instance, wherein no decree has been passed, thus, present appeal is not maintainable. Therefore, present litigation is nothing but an abuse of process of law.

14. In view of the above, present appeal is dismissed. Since the appeal is not maintainable, no order is required to be passed in the application seeking condonation of delay in filing the appeal.

15. Pending application(s), if any, stand disposed of accordingly.

09.10.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No