

RSA-432 of 2018 (O&M)

2023:PHHC:110020

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

RSA-432 of 2018 (O&M)

Date of decision: 17.08.2023

Reethu Ram @ Reethu Singh

.....Appellant

Versus

Sub Divisional Officer, Canal Sub Division Karhali

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Animesh Sharma, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 09.04.2014 passed by the Court of learned Civil Judge (Junior Division), Samana, whereby suit of the appellant-plaintiff was partly decreed as well as against the judgment and decree dated 31.07.2017 passed by the Court of learned Additional District Judge, Patiala, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff Reethu Ram had filed present suit for declaration to the effect that the alleged action of defendant in dispossessing plaintiff forcibly and illegally over the suit land and auctioning or leasing out the same to anybody else except plaintiff on the basis of orders dated 24.1.2011 and 27.9.2011, passed

in the utter violation of judgments and decrees dated 24.3.1982 and 19.3.1984 and in the ignorance of order dated 12.2.1999 and 11.8.2001 passed by the Civil Court, were wrong and illegal and were liable to be set aside and suit for permanent injunction restraining defendant, his employees, servants, agents permanently from interfering in any manner whatsoever in the peaceful possession of plaintiff over suit land or from dispossessing him forcibly and illegally from the suit land as fully described in the head note of the suit and further restraining defendant, his employees, servants and agents from auctioning or leasing out the suit land in possession of plaintiff in any manner to anybody else except plaintiff on the basis of order dated 24.1.2011 passed by the Collector, Sub Division Samana, District Patiala in File No.1/Collector, instituted on 19.3.2010 and order dated 27.9.2011 passed by the Deputy Commissioner, Patiala exercising the powers of Commissioner, Patiala Division, Patiala in File No. 38/PP Act/DC, instituted on 7.6.2011 passed in the utter violation of judgments and decrees dated 24.3.1982 and 19.3.1984 and in the ignorance of order dated 12.2.1999 and 11.8.2011 and suit for mandatory injunction directing defendant not to auction or lease out the suit land to anybody else except plaintiff in the utter violation of judgment and decree dated 24.3.1982 and 19.3.1984 and further directing to accept the lease amount from plaintiff in compliance of order dated 12.2.1999 passed by the Civil Court. It was averred that suit land was the ownership of Canal Department and plaintiff took the same on lease. The plaintiff was in actual, physical and peaceful possession of the suit land since

1978. Plaintiff also deposited the lease amount, but after the year 2000, Canal Department refused to accept the lease amount in utter violation of judgments and decrees dated 24.3.1982 and 19.3.1984 and order dated 12.2.1999. Defendant had filed a petition against plaintiff in the court of Collector Samana under Section 4 of the Public Premises and Land (Eviction and Rent Recovery) Act 1973 and order in said eviction petition had been passed wrongly and illegally for eviction of plaintiff from the suit land. Though plaintiff requested defendant for not dispossessing illegally and unlawfully but of no use, rather orders dated 24.1.2011 and 27.3.2011 had been passed against plaintiff.

3. Upon notice, defendant appeared and contested the suit by filing written statement taking preliminary objections that the suit of plaintiff was not maintainable and plaintiff has not come to the Court with clean hands. It was further pleaded that plaintiff was in illegal and unauthorized possession of the suit property. On merits, it was alleged that entire stand of plaintiff regarding taking of suit land by him on lease was false and defendant never acted illegally. It had been admitted that plaintiff was in possession of suit land. Rest of the averments had been specially denied with the prayer of dismissal of suit with costs.

4. Plaintiff filed rejoinder controverting the allegations made in written statement and reiterating those of plaint. From pleadings of the parties, following issues were framed:-

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

2. Whether plaintiff is entitled to mandatory injunction as prayed for? OPP
 3. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
 4. Whether suit of plaintiff is not maintainable in the present form? OPD
 5. Relief.
5. Parties led oral as well as documentary evidence in support of their respective contentions.
6. After hearing arguments and after appreciating evidence on record, trial Court partly decreed the suit of plaintiff vide judgment and decree dated 9.4.2014. The operative portion of the said judgment reads as under: -

“13. In view of aforesaid findings on issues No.1 to 4 suit of the plaintiff with regard to relief of declaration stands dismissed. However, with regard to relief of permanent injunction it is decreed in the manner that defendants are permanently restrained from dispossessing the plaintiff from the suit land except in due course of law and with regard to relief of mandatory injunction the same is decreed in the manner that the defendants are permanently restrained from leasing out/auctioning the suit land in favour of any one else except the plaintiff except before getting the suit land evicted from the plaintiff by following due course of law. Suit partly decreed accordingly. Parties to bear their own costs. Decree sheet be prepared and file be consigned to record room.”

7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 31.07.2017.

8. Learned counsel for the appellant contended that findings of both the Courts below with regard to rejection of relief of declaration are erroneous in the eyes of law. He further contended that Courts below have wrongly interpreted the judgments and decree of the civil Court dated 24.03.1982 and 19.03.1984 which specifically state that appellant cannot be evicted from the suit land except in due course of law and the suit land cannot be auctioned or leased out in favour of anyone else except after dispossessing the appellant in due course of law.

9. Perusal of the record shows that taking into consideration previous judgments and decrees dated 24.03.1982 and 19.03.1984, respondent was restrained by the Courts below from dispossessing the appellant from the suit land by use of force i.e. except in due course of law. Further the respondent has also been restrained from leasing out the suit land to anybody else except first getting the appellant evicted from the suit land in due course of law. Thus, contention of the learned counsel for the appellant that judgments and decrees dated 24.03.1982 and 19.03.1984 have been mis-interpreted is mis-conceived. Appellant failed to prove that orders passed by the revenue authorities were illegal, therefore, relief of declaration has rightly been declined to the appellant by the Courts below. Moreover, possession of the suit land has already been taken from the appellant in due course of law and the said fact has been confirmed by the learned counsel for the appellant during the course of hearing.

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10. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

12. In view of the above, present appeal is dismissed.

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

17.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No