

RSA-842-2021 (O&M)

Sr. No.104

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

RSA-842-2021 (O&M)

Date of decision: 25.01.2023

Surinder Kumar Sharma and others

...Appellants

Vs.

Jagdish Rana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. G.C. Shahpuri, Advocate
for the applicant-appellants.

ARUN MONGA, J. (ORAL)

CM-3974-C-2021

For the reasons stated in the application, the same is allowed subject to all just exceptions. Delay of 32 days in refiling the appeal is condoned.

RSA-842-2021 (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiffs are in second appeal before this Court assailing learned trial Court judgment and decree dated 11.08.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 30.09.2019, dismissing suit for permanent injunction filed by plaintiff/appellants.

3. Laconic facts first, as noticed by Courts below.

3.1. Plaintiffs are real brothers and plaintiff Nos.1 and 2 filed civil suit through plaintiff no.3 being their General Power of Attorney. Thus plaintiff no.3 filed the suit on his own behalf as well as on behalf of plaintiff Nos.1 and 2. It was pleaded that plaintiffs had purchased the property in dispute in equal shares for valuable consideration and as such were its owners in possession. Plaintiffs raised

construction of the house over the property in dispute where their mother was residing and they also constructed a Mandir (temple) in that premises for worship/prayers.

3.2. It was further pleaded that suit property ever since was situated within the municipal limits of Jagadhri and now under the Municipal Corporation, Yamuna Nagar and the area was thickly populated. Further they pleaded that the neighbours of plaintiffs also started coming to their Mandir and they and all other family members being religious minded never restrained the people from visiting Mandir for offering prayers. Plaintiffs further submitted that now defendants started proclaiming that the said Mandir was not personal Mandir/property of plaintiffs and it was a common Mandir.

3.3. Defendants were threatening to dispossess plaintiffs and their family members forcibly for which they had no right or authority. Plaintiffs requested the defendants many a times for not taking law in their hands but they were adamant to dispossess plaintiffs from their premises forcibly. Hence, the civil suit.

4. On being served, defendants appeared and filed their joint written statement submitting therein that there was a Murti of Maa Durga Devi installed in the Mandir known as Durga Mandir, situated in Sham Sunder Puri, Jagadhri and the said Mandir was constructed by collection and donation given by worshipers and residents of the colony and plaintiffs had no concern with the same.

4.1. Further they submitted that a registered society in the name of "Maa Durga Devi Mandir Society", Shyam Sunderpuri, Jagadhri was also in existence for management of Mandir and to arrange all kinds of functions and ceremonies. Further they maintained that Durga Mandir was situated in Shyam Sunderpuri, Jagadhri, which was bounded as East-Street, South-Street, West-House of Rajesh Patwari and North-House of Jai Narain, area of which was 219 Square yards, where exists a Mandir Bhawan, Room and Hall along with boundary wall and

amount was collected from Public as well as worshipers of the colony and the said building was constructed from the above said collection.

4.2. Defendants further submitted that plot in question had been gifted away to God/Idol and writing to this effect was also executed on 14.5.2002, which was signed by plaintiffs and other witnesses including defendants. They averred that said Mandir was Public Charitable Endowment and plaintiffs had no concern with the same. In this regard, the society was also registered in 2002 i.e., on 3.9.2002 and defendants were members thereof who had been managing the said Public Charitable Endowment and plaintiffs had no concern with the same.

4.3. Defendants further pleaded that father of Plaintiffs' Jai Narain, who appeared as DW3 in Civil Suit no.311, had stated that he had given this land to Committee of Mandir as gift and Mandir was to be constructed by Committee, which was public charitable endowment and the said land had been given for Mandir/God/Idol immediately after two years of purchase of land. They alleged that plaintiffs tried to interfere in the Management, regarding which an application had been moved to D.C. Yamuna Nagar in August-2011 and an application had also been given to the SHO of P.S. City Jagadhri. They further averred that plaintiffs had not raised any construction in the premises where Mandir was in existence and denied the existence of house of plaintiffs in the premises of Mandir. Further they averred that plaintiffs or their family members had no concern with the same except to come as worshiper. Rest of the averments made in the plaint has been denied specifically and a prayer for dismissal of the suit has been made.

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

1. Whether the plaintiffs are entitled to a decree for Permanent Injunction as prayed for? OPP
2. Whether the plaintiffs have concealed the true and material facts from this court? OPD

3. Whether the plaintiffs have no locus standi to file the present suit? OPD
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether the suit of the plaintiff is time barred? OPD
7. 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, issue No.1 was decided against the plaintiff/appellants, whereas issues No.2 to 5 were decided against defendants and consequently, the suit of plaintiffs was dismissed with costs.

8. Aggrieved, the plaintiffs-appellants preferred first appeal which was dismissed by learned First Appellate Court.

9. Learned First Appellate Court below dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

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

“xxxx xxxxx xxxxx xxxxx

14. Further, Ex. D4 reflects that "Maa Durga Devi Mandir Society" is a duly registered society. Undoubtedly, it was registered in the year 2002, however, society that manages the mandir is registered after coming into existence of the mandir. It has also been argued on behalf of the appellants-plaintiffs that the appellants-plaintiffs had raised construction of the mandir way back in the year 1995-96. It is significant to mention that from the oral and documentary evidence on record it emerges that construction of the mandir was started in the year 1995-96, however, plaintiff's- appellants have failed to bring on record any cogent documentary evidence to establish that the mandir was constructed with their own funds or that idols were purchased by them. Moreover, appellants-plaintiffs have not come to the court with clean hands as they have concealed the factum of agreement/writing dated 14.5.2002 Ex. D1. Moreover, when aforesaid writing pleaded by respondents in their written statement, no replication was filed by appellants/plaintiffs controverting the same. It is well settled principle of law that the plaintiffs have to stand on his/their own legs to prove

his/their case by leading cogent and convincing evidence admissible in evidence to succeed in his/their claim and he/they cannot take the benefit of the weakness of the case of the defendant. Reliance placed upon the case law titled as Shiv Charan Vs. Siri Ram and another. 2008(2) P.L.R. 645 (P&H). Moreover, appellants-plaintiffs are solely claiming the relief of permanent injunction being owners and in exclusive possession of the suit property, however, they have failed to establish prima facie case in their favour.

15. Further, learned counsel for the appellants has challenged the findings of learned trial court that title and ownership cannot be decided in a suit for permanent injunction. It is relevant to mention that respondents by way of putting forth the alleged writing dated 14.5.2002 have cast cloud upon title of the appellants, as respondents have asserted title of community and that appellants are not in exclusive possession of the temple. In such circumstances, appellants-plaintiffs had to file suit for declaration. As an action for declaration is remedy to remove the cloud on title to property. In present case, appellants have not even filed replication controverting the stand taken by the respondents. In present case, appellants have failed to establish that on the date of filing of the suit, the appellants were in lawful exclusive possession of the suit property/temple and the respondents tried to interfere in their possession. Thus, in view of the aforesaid and on equity, it is held that appellants-plaintiffs are not entitled to the relief of permanent injunction. Reliance placed upon the case law titled as Anathula Sudhakar Vs. P. Buchi Reddy (dead) by L.Rs & others. 2008(4) S.C.C. 594, wherein it has been held that 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 suit for declaration of title, instead of deciding the issue in a suit for mere injunction. Thus, in the present case, the appellants-plaintiffs are not entitled to the relief of permanent injunction, as sought for, against the defendants and thus, the findings recorded by the learned lower court thereby declining the relief of permanent injunction to the appellants-plaintiffs are well reasoned and justified.”

11. I have heard learned counsel for appellants and perused the judgments of both the Courts below.

12. Briefly stated, the contentions herein are that there was no dispute about the plaintiffs' ownership of suit property and, therefore, suit for injunction simpliciter without seeking declaration of ownership was maintainable; that the Courts below have misread the writing dated 19.05.2002, which clearly shows that plaintiffs were the owners, in possession and management of the suit property and that the

courts below wrongly held on the basis of document Ex. D-1 dated 14.05.2002 that the land was donated for Mandir.

13. The impugned judgments show that the defendants had categorically disputed the plaintiffs' ownership of the suit property. Thus, the contention herein that there was no dispute about the plaintiffs' ownership of suit property being contrary to record is rejected. The aforesaid other contentions were also duly considered and repelled by the courts below by recording cogent and convincing reasons, with which I am inclined to agree.

14. My considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

15. Further in my view the suit for injunction is not maintainable without seeking declaration *qua* proprietary rights of the suit property. 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.”

16. From perusal of the above, even otherwise, it was required on the part of plaintiff-appellants to have sought declaration while seeking relief of injunction which is consequential benefit to the declaration.

17. 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.”

18. Thus, without seeking relief *qua* the proprietary rights on the title of the suit property by way of declaration, plaintiff-appellants are not entitled to any injunction.

19. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

20. In the premise, 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.

21. 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.

22. 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.

23. Pending application/s, if any, shall also stands disposed of.

24. No order as to costs.

(ARUN MONGA)
JUDGE

January 25, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No