

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

135

RSA-53-1990 (O&M).
Date of Decision: 02.04.2024.

LACHHI

... Appellant

Versus

HUKAM CHAND AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Umesh Aggarwal, Advocate,
for the appellant.

Mr. O.P. Goyal, Sr. Advocate, with
Mr. Yugank Goyal, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J (ORAL).

Appellant-defendant has preferred the present Regular Second Appeal against the judgment and decree dated 31.05.1989 passed in Civil Suit No.107 RBT of 01.10.1987 by the Court of Addl. Senior Sub Judge, Palwal, vide which the suit of the respondent-plaintiff was decreed as well as against the subsequent dismissal of Civil Appeal No.42/13 instituted on 15.06.1989 decided vide judgment and decree dated 20.09.1989 by the Additional District Judge, Faridabad.

2 Briefly summarized, the facts of the present case are that respondent-plaintiff filed a civil suit for seeking a decree for the possession

of agricultural land measuring 5 kanals 17 marlas comprised in Khasra No.57/10/2 situated within the revenue estate of village Sultanpur, Tehsil Palwal. As per the averments contained in the plaint the respondent-plaintiff was tenant under the owner namely Tikam Dass on agricultural land bearing Khewat/Khatauni No.176/192, Killas No.57/10/2 measuring 5 kanals 17 marlas and was so recorded in the revenue record pertaining to the year 1980-81, 1975-76 and 1970-71. The khasra girdawari also established his possession over the suit land as none of respondent-plaintiff was recorded in the column of cultivation.

3 The respondent-plaintiff had earlier filed a civil suit in the Court of Sub Judge First Class, Palwal, against the appellants-defendants for permanent injunction regarding the land in dispute bearing Civil Suit No.416 of 07.06.1984 which was decreed against the appellant-defendant on 14.08.1986 and a decree of permanent injunction restraining him from interfering in the possession of the respondent-plaintiff was passed. During the same period, the appellant-defendant had also filed another civil suit against the respondent-plaintiff in which the appellant-defendant included the above land in dispute. The said suit of the appellant-defendant was filed on 02.06.1984 bearing Suit No.303. Both the said suits were consolidated and were decided vide a common judgment and decree dated 14.08.1986 whereby the suit of the respondent-plaintiff regarding the land in dispute as in Civil Suit No.416 of 07.06.1984 was decreed and the suit filed by the appellant-defendant regarding the same land was dismissed. The respondent-plaintiff was held to be in possession of the said land. No appeal against the said judgment and decree had been preferred by the appellant-

defendant in the above said civil suit No.416 of 1984 which was decreed on 14.08.1986 or against the judgment and decree passed in Civil Suit No.303 titled Narangi Vs. Hukam Chand and another.

4 It was further averred that after passing of the judgment and decree, the appellant-defendant took forcible and illegal possession of the land in dispute in the early hours of the day despite the injunction restraining the appellant-defendant from interfering in the possession of the respondent-plaintiff. An execution petition bearing No.150 of 1986 was filed on 30.10.1986 with a prayer for delivery of the possession of the land in dispute. In the said execution application, warrant of possession for delivery of the land in dispute was issued by the Executing Court, however, the appellant-defendant is stated to have restrained the authorities from seeking possession qua which a criminal case under Section 325/34 IPC was also registered against the appellant-defendant which was pending as on the date of institution of the suit. A further civil suit for declaration was also filed by the appellant-defendant bearing No.517 of 1987 in the Court of the then Addl. Senior Sub Judge, Palwal, wherein the decree in civil suit No.416 of 1984 dated 14.08.1986 was separately challenged. The said suit was also dismissed by the Addl. Senior Sub Judge, Palwal, vide judgment and decree dated 07.09.1987.

5 At the same time, objections were filed by the appellant-defendant in the execution petition under Section 47 CPC in August 1987 and vide order dated 12.09.1987, the said objections were accepted by the executing Court and the execution application was dismissed for the reason that the appellant-defendant had already taken the

possession of the land in dispute and since the decree was for permanent injunction, the same cannot be considered as a decree for possession. The respondent-plaintiff was thus required to take recourse to the appropriate remedy for seeking possession in accordance with law. Hence, the present suit was filed.

6 The appellant-defendant entered appearance before the Sub Judge First Class, Palwal wherein his reply was filed and various issues were raised including regarding the maintainability of the suit and it was also claimed that the defendants-appellants and his father, prior to his death, had been in cultivating possession of the suit land as tenant and that the plaintiff never raised any objection with respect to the cultivating possession of the appellant-defendant No.1 or his predecessor in interest. It was alleged that appellant-plaintiff got his name entered as gair mausi in the revenue record regarding the suit land without the knowledge of the appellant-defendant and the revenue officers did not follow the prescribed procedure as per law. The entries as recorded in the revenue record were thus not binding on the rights of the appellant-defendant and conferred no right, title or interest in the respondent-plaintiff.

7 While filing the para-wise reply on merits, the appellant-defendant claimed to be in actual physical possession of the suit land and having succeeded to the same after the demise of his father and claimed that the respondent-plaintiff got revenue entries recorded in connivance with the revenue officials and that he is taking advantage of the wrongful entries recorded in the revenue record. A prayer for dismissal of the suit was thus made.

8 Replication was filed to the plea raised by the appellant-defendant. On completion of the pleadings, the following issues were framed:-

- 1 Whether the plaintiff was in possession over the suit land as tenant under Tikam Dass ?OPP
- 1-A Whether the suit is barred by the principle of resjudicata ?OPD
- 2 Whether the plaintiff has got no locus stsandi to file the present suit? OPD
- 3 Whether the plaintiff has got no cause of action to file the present suit? OPD
- 4 Whether the plaintiff is stopped by his act and conduct from filing the present suit ? OPD
- 5 Whether the defendant No.2 and 3 are unnecessary party ? OPD
- 6 Whether the defendants are entitled to special costs ? OPD
- 7 Relief.

9 Parties led their respective evidence and upon consideration of the same, Addl. Senior Sub Judge First Class, Palwal, recorded its finding that the respondent-plaintiff was in actual possession of the suit land in dispute prior to the filing of the Civil suit no.416 of 1984 and was forcibly dispossessed by the appellant-defendant on 14.08.1986 when the decree was passed in the said civil suit. It was also held that the appellant-defendant are barred by the principle of res judicata to take this plea again that they had

been in cultivating possession of the suit land even prior to the earlier decree dated 14.08.1986 passed between the parties which had already attained finality.

10 Aggrieved thereof, an appeal was thereafter filed by the appellant-defendant before the District Judge, Faridabad. The said appeal was decided vide judgment and decree dated 21.01.1989 by the Additional District Judge, Faridabad. The same was dismissed after consideration of the arguments advanced on behalf of the appellant-defendant and by recording a finding that the Court had specifically concluded in favour of the respondent-plaintiff in civil suit No.416 of 1984 that he was in possession of the suit land measuring 5 kanals 17 marlas comprised in said khewat/khssra numbers and an order of restrain had been against the appellant-defendant from interfering in the possession of Hukam Chand. It was held that the appellant-defendant was hence not in lawful possession of the land in dispute. A mere dismissal of the execution application cannot be said to operate as res judicata because the said application was dismissed on the ground that after passing of the decree Hukam Chand had not been dispossessed hence, there was no violation of the judgment and decree dated 14.8.1986 passed in civil suit No.416 of 1984 and that the decree not being that of possession, the same cannot be ordered.

11 Aggrieved of the dismissal of the appeal, the present regular second appeal had been filed.

12 Learned counsel for the appellant-defendant has vehemently argued that the appellant-defendant and prior to him his predecessors-in-interest had been in cultivating possession of the suit land and that there was

no averment raised in the plaint as to how and under what circumstances, the possession of the suit land had been taken over by them. He further contends that the respondent-plaintiff had claimed that he had taken over the possession but in the absence of any specific details about being divested of the possession, the present suit seeking possession of the suit land was not maintainable. He further contends that the execution application filed by the respondent-plaintiff was dismissed, hence, the possession of the appellant-defendant has to be protected. The judgments and decrees passed by both the Courts are bad and are liable to be set aside.

13 Controverting the said argument, learned counsel for the respondent-plaintiff argues that a specific plea as regards forcible dispossession from the suit property had been taken by the respondent-plaintiff and it was also stated that an FIR under Section 325/34 IPC, in relation to the forcible dispossession and causing beatings to the respondent-plaintiff had also been registered, hence, there was a forcible dispossession of the respondent-plaintiff from the suit land including the specific incident. He further contends that the execution petition was not dismissed on the ground of any demerit rather the same was dismissed on the ground that the dispossession was not after the passing of the decree and that as a suit for injunction had already been decreed, the respondent-plaintiff was required to pursue his remedies for seeking possession in a manner known to law.

14 No other argument has been raised.

15 I have heard learned counsel appearing for the respective parties and have also gone through the record.

16 After going through the same, I am of the opinion that the present appeal is without any merits and the same deserves dismissal for the reason that the entire case of the appellant-defendant is based on a plea that the appellant-defendant and prior thereto his predecessors-in-interest were in actual physical and cultivating possession of the land in dispute. It is further well established that both the parties i.e. the respondent-plaintiff as well as the appellant-defendant had preferred separate civil suits before the civil Court and that the same were clubbed together and were decided by a common judgment and decree dated 14.08.1986. The civil suit No.416 preferred by the respondent-plaintiff seeking injunction had been allowed whereas the suit filed by the appellant-defendant bearing civil suit No.303 was dismissed. No challenge to the said judgment and decree dated 14.08.1986 was raised at that point of time and that the said judgment and decree had attained finality. An attempt was later made by the appellant-defendant to raise a challenge to the above said judgment and decree by a separate civil suit which was again dismissed by the Court of Sh.R.S. Baswana, the then Additional Senior Sub Judge, Palwal vide judgment dated 07.09.1987.

17 Hence, the only plea taken by the appellant-defendant that he was in possession of the land in question as a tenant could not be established by the appellant-defendant in any of the proceedings that had been initiated and including the proceedings that had been filed at the behest of the appellant-defendant. The said plea of the appellant being in possession having not been accepted by the Courts on more than occasions, do not give a fresh cause of action to the appellant-defendant to re-agitate

the said issue and to claim himself to be in actual physical possession of the land and staking right to defend such possession. The revenue record reflected and established on actual and physical possession of the respondent-plaintiff and the same had been accepted by the Courts.

18 A concurrent finding of fact has been recorded not only in the present civil suit but also in the suit that were filed earlier and between the parties. The findings recorded therein operate also as a res judicata against the appellant-defendant and he cannot seek to reopen the said judgment and decree in a fresh separate suit by raising objection to the claim raised by the respondent-plaintiff, for seeking restoration of his possession, on the basis of his right which stands accepted in the judgment and decree dated 14.08.1986.

19 Further, I find that there is no illegality, perversity or failure on the part of both the Courts in appreciation of the evidence led on record.

20 The present appeal is accordingly dismissed. The judgment and decree 31.05.1989 passed by the Court of Addl. Senior Sub Judge, Palwal, as well as the judgment and decree dated 20.09.1989 by the Additional District Judge, Faridabad, are affirmed.

21 Order dated 08.11.1990 staying dispossession of the appellant stands vacated.

22 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 02, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No