

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.745 of 1995 (O&M)
Reserved on : 14.02.2024
Date of Decision : 26.02.2024

State of HaryanaAppellant

VERSUS

Bhullar (now deceased) through LR'sRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Girdhar, AAG Haryana for the appellant.

Mr. R. A. Sheoran, Advocate for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant against the judgment and decree dated 20.10.1994 passed by the First Appellate Court whereby it decreed the suit of the plaintiff-respondent. The Trial Court vide it's judgement and decree dated 24.03.1992 dismissed the suit.
2. The plaintiff-respondent filed a suit for permanent injunction against the defendant-appellant for restraining it from taking forcible possession of the property in dispute comprised in Khasra No.20//14 min south (1-19) situated at Akbarpur within the municipal limits of Loharu, Tehsil Loharu, District Bhiwani. It was averred that the plaintiff-respondent alongwith other cosharers was the owner in possession of total land

measuring 51 kanals 18 marlas including the property in dispute and in a mutual partition in between the cosharers the plaintiff-respondent had become exclusive owner in possession of the property in dispute. As per the plaintiff-respondent, he had constructed a residential house and was residing there with his family and was also running a hotel-cum-dhaba. It was alleged that the defendant-appellant through its officials had threatened to take forcible possession of the property in dispute. Hence, the suit. In it's written statement the defendant-appellant took the stand that the Khewat had already been partitioned in accordance with law and the partition proceedings had attained finality. As per the defendant-appellant, in the partition proceedings the property in dispute fell to the share of the defendant-appellant and that the plaintiff-respondent had nothing to do with it. It was averred that the plaintiff-respondent was in possession of some other land while one Dharambir was running a dhaba unauthorizedly in a hut in the property in dispute. Replication was filed and the contents of the plaint were reiterated. It was further pleaded that the order for partition dated 23.07.1984 passed by the Assistant Collector 1st Grade was illegal, invalid, not binding upon the rights of the plaintiff-respondent and liable to be set aside. It was further pleaded that Dharambir was running a dhaba as tenant of the plaintiff-respondent.

3. From above pleadings of parties the following issues were framed :

1. Whether the plaintiff is in possession of the suit land as alleged ? OPP
2. Whether the defendant threatened to take possession by force as alleged ? OPP

3. Whether the plaintiff has suppressed material facts?

If so, to what effect ? OPD

4. Whether this Court has no jurisdiction to try this suit ? OPD

5. Whether the suit is false and frivolous and the defendant is entitled to special costs ? If so, how much ?
OPD

6. Whether the suit property has fallen to the share of the defendant in partition ? OPD

7. Whether the said partition is illegal, void and not enforceable as alleged ? OPD

8. Relief.

4. Vide judgement and decree dated 24.03.1992 the Trial Court dismissed the suit of the plaintiff-appellant. However, on appeal, the First Appellate Court vide judgement and decree dated 20.10.1994 decreed the suit of the plaintiff-respondent. Hence, the present regular second appeal.

5. Learned State counsel has contended that the First Appellate Court has erred in decreeing the suit of the plaintiff-respondent on mere conjectures and surmises. It is submitted that there is sufficient material available on the record to show that the property in dispute came to the share of the defendant-appellant in partition proceedings and as such the suit deserved to be dismissed. Per contra, learned counsel for the plaintiff-respondent submitted that the partition proceedings were illegal and not binding and that infact it was the plaintiff-respondent who was in possession of the property in dispute and therefore the First Appellate Court rightly decreed the suit.

6. Heard learned counsel for the parties and perused the record.

7. The record especially Ex.D2 shows that the defendant-appellant was the owner to the extent of 2/3rd share in the total land measuring 51 kanals 18 marlas and the plaintiff-respondent was owner to the extent of 1/36 share. The record of the partition proceedings shows that the plaintiff-respondent had 1 kanal 8 marlas in the joint holding and after partition he got 1 kanal 9 marlas in Khasra No.20//15/4. The property in dispute falling in Khasra No.20//14 was divided amongst the defendant-appellant and others. The plaintiff-respondent was not given any share in Khasra No.20//14 though he got an extra marla in the area coming to his share. Further, when the partition was approved by the Assistant Collector 1st Grade, after the period of limitation had elapsed, no appeal had been preferred by any party. Even, as per documentary evidence produced by the plaintiff-respondent in the form of jamabandi Ex.P5, he is not in possession of the property in dispute. Had the plaintiff-respondent been in actual possession, his possession would have been recorded in the revenue record.

8. The present suit was one for simpliciter injunction. In **Anathula Sudhakar vs. P. Buchi Reddy [(2008) 4 SCC 594]** the Supreme Court had the occasion to lay down general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief. The relevant portion of that judgment is extracted below :

“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 plaintiff's 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. Alagammal, (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.”

9. The First Appellate Court erred in holding against the defendant-appellant and delving into the question of title in a suit for

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injunction. Further, there was also no occasion for the First Appellate Court to hold that the partition was not bonafide and was a malafide act of the officials and hence the plaintiff-respondent was held being in possession. There was no challenge in the suit for injunction to the partition proceedings or the orders passed in the partition proceedings.

10. In view of the above, the reasoning given by the First Appellate Court and the findings recorded by it are perverse and not sustainable. The judgement and decree of the First Appellate Court are hereby set aside and the judgement and decree of the Trial Court is restored. The present regular second appeal is allowed and the suit of the plaintiff-respondent stands dismissed. Pending applications, if any, also stand disposed off.

26.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO