



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108-1

RSA-2412-1999
Date of decision : 14.11.2024

Gobind Singh and others Appellants

versus

Jagtar Singh Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sandeep Jasuja, Advocate
for the appellants.

Mr. Kulwant Singh, Advocate and
Mr. Vishal Pundir, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal impugning judgments and decrees passed by the Courts below, whereby suit filed by the plaintiff seeking decree of permanent injunction stands partly decreed and the appeal preferred by the appellants stands dismissed.
2. Plaintiff filed suit for permanent injunction against the defendants seeking decree of restraint against them from interfering in his peaceful possession over the suit land as mentioned in the plaint. Plaintiff claimed to be in exclusive possession of the suit land. It was asserted that the defendants are adamant to take forcible possession from the plaintiff despite having no concern with the suit property. It was further claimed that the plaintiff again filed suit bearing No.173-1 of 25.02.1992 against the defendants and one Kishan Singh s/o Ram Lal for permanent injunction qua the same suit land. During the pendency



of the suit, a compromise was effected between the parties. The suit was dismissed under Order IX Rule 8 CPC. However, subsequent to the compromise, plaintiff again on 09.11.1992 threatened to interfere in the peaceful possession of the plaintiff.

3. Suit was resisted by the defendant claiming that the plaintiff was guilty of concealment of material facts. Plaintiff earlier filed suit No.880-1 of 27.07.1990, claiming himself to be in possession of the land measuring 06 kanal 09 marlas. The said suit was withdrawn by the plaintiff on 13.02.1992. Again on 25.02.1991, plaintiff instituted another suit bearing No.173-1 in respect of land measuring 11 kanal 06 marlas. The same was dismissed under Order IX Rule 8 CPC on 29.10.1992. Thus, the plaintiff has no cause of action or *locus standi* to file the present suit, as the present suit would be barred by law. Defendants further claimed themselves to be co-sharers of the suit property. It was further denied that any compromise was effected in the earlier suit.

4. On the basis of the pleadings, following issues were framed:-

“1. Whether the plaintiff is entitled to permanent injunction prayed for? OPP.

1A. Whether the plaintiff has not come to the court with clean hands? OPP.

1B. Whether plaintiff has no cause of action to filed his suit? OPD.

2. Relief.”

5. Trial Court after analysing evidence threadbare came to the conclusion that the plaintiff proved himself to be in exclusive possession of the suit land measuring 06 kanal 09 marlas and is a co-



sharer in exclusive possession and is thus entitled to claim injunction to protect his possession. While returning finding on issue No.1A, Trial Court found that the plaintiff amended his plaint and admitted of having filed suit dated 25.02.1991 which was dismissed in default on 29.10.1992. Compromise stood duly proved as Ex.P1 and thus there was no concealment on behalf of the plaintiff. Trial Court also decided issue No.1B in favour of the plaintiff and against the defendants and thus, decreed the suit filed by the plaintiff partially with respect to land measuring 06 kanal 09 marlas only.

6. In appeal, the said findings stand affirmed by the Lower Appellate Court.

7. Learned counsel appearing for the appellants has assailed the judgment and decree passed by the Courts below claiming that the same is against the established canon of law that a co-sharer cannot maintain suit for injunction against a co-sharer. He further submits that in terms of provision as contained under Order IX Rule 9 CPC, the instant suit was barred as the earlier suit was dismissed in default under Order IX Rule 8 CPC.

8. Learned counsel for the respondent however submits that once the plaintiff was found to be in exclusive possession of the part of suit land, he is entitled to protect his possession and the only remedy available with the defendants claiming themselves to be co-sharers, was to file suit for partition. It has been further contended that bar as provided under Order IX Rule 9 CPC will not be attracted to the present case, as it was filed on a different cause of action.



9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. Learned counsel for the appellant is not in a position to dispute that pure finding of fact has been returned by the Courts below with respect to the plaintiff being in exclusive possession of part of the suit land qua which suit filed by the plaintiff has been decreed. There is no quell with the proposition that injunction cannot be granted at the behest of a co-sharer against another co-sharer. However, the said rule is subject to an exception i.e. mere a co-sharer is in exclusive possession of the parcel land, he can protect his possession claiming injunction against whole world including his co-sharers. Reference can be made to Full Bench judgment of this Court rendered in the case of '**Bhartu vs. Ram Swarup**, reported as **1981 PLJ 204**', wherein the Full Bench of this Court approved the following propositions qua rights and liabilities of co-sharers as settled by Division Bench of this Court in the case of **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Pb. 528:-**

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that



of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.”

11. In order to appreciate the contention raised by counsel for the appellants with respect to bar in maintaining the suit, it will be apt to peruse Order IX Rule 8 CPC and Order IX Rule 9 CPC which read as under:-

“Rule 8. Procedure where defendant only appears.

—Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Rule 9. Decree against plaintiff by default bars

fresh suit.—(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the



opposite party.”

12. The bar as contained under Order IX Rule 9 would be attracted to a subsequent suit only if the subsequent suit is filed on the same cause of action on which the earlier suit was filed. In the present case, the pleadings in the plaint read as under:-

“4. That on this Monday i.e. 9.11.92 a panchayat was called consisting of respectables of the village at the instance of plaintiff and defendants were summoned by the said panchayat and were asked by the panchayat not to interfere into the peaceful possession of the plaintiff qua the suit land but the defendants in a loud voice raised and threat as well as alarm with the words “we will definitely pick out the cotton crop from the suit land at any costs and will see how Jagtar Singh will remain in possession. ASSI JAGTAR SINGH THEIAN KHET WHICH LATTA BHAN DANIYA HAN TE KHATON BAHAR KADH DE A HAI”.

5. That with the raising threats and alarm by the plaintiff as stated above a great apprehension arose to the legal rights of the plaintiff as well as the crops are also and angered so the plaintiff is left with no other alternative except to seek the legal remedy by way of injunction to restrain the defendants for the protection of the standing crops as well as the legal right of the plaintiff, hence this suit is being filed for the interference of this Hon'ble Court.

5-A. That the plaintiff filed a suit for permanent injunction bearing case No. 173-1 of 25.2.1992 for permanent injunction seeking permanent restraint against the defendants and Kishan Ssingh s/o Ram Lal of V. Jhotianwali, Tehsil Fazilka for making interference into the possession of plaintiff. During pendency of the suit, the parties effected compromise with intervention of respectables of village. As by way of compromise the defendants had given assurance and undertaking not to cause interference into possession of plaintiff. In view of the undertaking/assurance the plaintiff gave the instructions to his lawyer not to appear in the Court as the parties have effected compromise. So the plaintiff also did not appear trusting the defendants, however the defendants appeared and the suit was dismissed under order 9 rule 8



C.P.C. on 29.10.1992 by the Court of Sh. S.S. Sandhu, Sub Judge, Fazilka. Photostat copy of writing regarding compromise dated 8.12.91 is attached herewith.

6. That the cause of action arose to the plaintiff with the threats of the defendants and stands completed on 9.11.92 at village Jhottianwali as stated above in para No. 4 above.”

13. The compromise has been proved on record as Ex.P-1. Thus, while the earlier suit bearing case No.173-1 dated 25.02.1992 was instituted on the cause of action prior thereto, the present suit has been filed pleading cause of action arisen in favour of the plaintiff on 09.11.1992 when defendants threatened to dispossess the plaintiff forcibly despite compromise Ex.P-1.

14. Thus, it can be safely inferred that the two suits are based upon different cause of actions and not on the same cause of action. Thus, the bar as contained under Order IX Rule 9 cannot be invoked to hold that the suit filed by the plaintiff is not maintainable.

15. As a sequel of the discussion hereinabove, finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

14.11.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No