

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2808-2023 (O&M)
Pronounced on: 05.03.2024

Tarawati

...Petitioner

Versus

Vishavnath Kapoor and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

None for respondents No.1 and 2.

Mr. Vishal Garg, Advocate
for respondent No.3.

RITU TAGORE, J.

1. This revision petition is against the order dated 16.02.2023 (Annexure P-1), whereby learned Civil Judge (Junior Division), Jagadhri in a Civil Suit No.1271 of 2016 titled as ‘Brij Mohan Gupta and others Vs. Smt. Tarawati and others’, allowed the respondents to sue the petitioner under Section 91, Code of Civil Procedure 1908 (in brevity, the CPC).
2. For convenience, the parties are referred to as per the status before the learned trial Court.
3. Learned counsel for the petitioner argued that impugned order dated 16.02.2023 (Annexure P-1) is liable to be set aside as learned trial Court completely overlooked the categorical averments made by petitioner in the reply (Annexure P-11) to an application filed under Section 91 read

with Section 151 CPC (Annexure P-10) by respondents. The petitioner pleaded that late Chunni Lal son of Late Vasudev resident of Jagadhri, was the original owner of the land and he carved out a colony commonly known as Civil Lines. Chunni Lal kept a piece of land measuring 1250 square yards with him and as per his last wish, a piece of land measuring 502 square yards out of the aforementioned land was gifted to her (petitioner), who is the daughter-in-law of late Chunni Lal, in the year 1979 by his heirs vide registered gift deed dated 20.01.1979. She became owner of the suit property based on said gift deed.

4. The learned counsel submitted that petitioner raised construction of her house in 1980 and a Local Commissioner was appointed in a Civil Suit No. 295 dated 21.07.1986 who also reported the construction of a house on the suit land. Furthermore, the Municipal Committee, Jagadhri, also approved the site plan (Annexure P-6) for reconstruction of the house on the suit property on 27.10.2013 in favour of petitioner. It is stated that suit property has been used by petitioner as owner in possession for last more than 44 years. Not only that, but the title of the petitioner has also been upheld by the competent Court of law and findings in this regard have attained finality. To support his plea, the learned counsel referred to the judgment and decree dated 10.06.1986 passed in Civil Suit No.426 of 1981 titled as 'Tara Gupta Vs. Municipality, Jagadhri and another' (Annexure P-3), the site plan (Annexure P-2) filed in the above said suit and the judgment and decree passed in appeal preferred against the judgment and decree (Annexure P-3) bearing Civil Appeal No.73/13 of 1987 titled as 'Municipality, Jagadhri and another vs. Tara Gupta' (Annexure P-5). Also, referred to Civil Suit No.295 dated 21.07.1986 filed by some residents against the petitioner that was also dismissed (Annexure P-4). Learned

counsel submits that in the aforesaid litigation, it was held that there was no park on the suit property and petitioner is a registered owner in possession of the same. The learned counsel submitted that the aforesaid findings have attained finality.

5. Learned counsel for petitioner contended that once an issue has already been adjudicated upon and has attained finality, the same cannot be reopened after several years. The learned counsel also submitted that the suit preferred by the respondents is not only hit by the rule of limitation but also by principle of *res judicata*.

6. Learned counsel further submitted that in another Civil Suit No.177-CS of 1996 filed by Asha Devi and another against Municipal Committee, learned Appellate Court observed in its judgment and decree dated 30.03.1999 (Annexure P-9) that the site in question was never reserved by the Municipal Committee nor it was vested in the Committee. It is submitted that RSA bearing No.2362 of 1999 preferred by Municipal Committee is pending before this Court. However, the Municipal Committee, in grounds of appeal, specifically averred that the land of the petitioner is completely separate. The learned counsel further stated that the learned trial Court did not dwell on the pleadings and the documents relied and referred to by the petitioner before passing the impugned order.

7. The learned counsel also contended that possession of the petitioner over the suit property is not recent, as alleged in the application filed under Section 91 CPC and in the suit as well. False averments have been made in the suit, showing a wrong and incomplete layout plan of the colony (Annexure P-8). However, correct and complete layout plan of Civil Lines, where the suit property is situated, has been placed on record by the petitioner to show the exact position prevailing at the spot.

8. The learned counsel also contended that learned trial Court failed to notice that two plaintiffs, out of five who filed the suit, had their names deleted by filing an affidavit (Annexure P-12). The learned counsel stated that a false and frivolous litigation has been instituted against the petitioner, an old woman, by certain individuals, who hold personal grudges against her, solely to harass her. Learned counsel contended that observation of learned trial Court that issue regarding suit property requires evidence is patently wrong, as ample evidence has already been placed on record to show that title, ownership and possession of petitioner have already been finally adjudicated upon in the previous litigation. Learned counsel has therefore submitted that impugned order is indefensible in eyes of law and should be set aside. In support of his arguments referred to the judgment of Hon'ble the Supreme Court in **'Forward Construction Co. and others Vs. Prabhat Mandal (Regd), Andheri', 1986 AIR (Supreme Court) 391** and co-ordinate Bench of this Court in **'Des Raj Vs. Punjab Government and others' 1988 (1) PLR 282.**

9. Contra, learned counsel for the respondents submits that the impugned order is fair and sustainable in the eyes of law, as the conflicting claims of the parties can only be decided thorough evaluation of the evidence on record. Learned counsel contends that in view of the material pleas taken by respondents, a suit under Section 91 CPC is maintainable and learned trial Court has rightly allowed their application, permitting them to pursue litigation under Section 91 CPC. It is stated that there is no merit in the revision and prayed to dismiss the same.

10. I have considered the case file and gone through the paper book.

11. Perusal of the plaint (Annexure P-7) indicates that initially 5

persons filed a suit under Section 91 CPC against the petitioner, respondents No.3 and 8. Subsequently, as evident from the impugned order, the suit was dismissed in default qua the plaintiffs No.1, 3 and 5.

12. Section 91 of Code of Civil Procedure reads as under:-

“Public nuisances and other wrongful acts affecting the public-
(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

13. The aforementioned provision of law specifies that a suit under Section 91 CPC can be instituted by two or more persons with leave of the Court. Therefore, a suit under Section 91 CPC initiated by two persons currently pursuing the case is maintainable.

14. Now coming on the merits of the revision petition. The respondents filed an application (Annexure P-10), seeking leave to institute a suit under Section 91 CPC (Annexure P-7). They pleaded that nuisance was caused in the shape of construction raised on the suit property, alleging it was originally reserved as a park. They further sought relief to declare the suit property, as detailed in the plaint, as a public park and an open space reserved for inhabitants of the locality. Additionally, they requested a decree for mandatory injunction directing the petitioner and other respondents to vacate the plot by removing construction detailed in the plaint and highlighted in the attached site plan.

15. The petitioner, by filing reply, resisted the application, pleading that issue with respect to the suit property had already been decided in her favour in previous litigation (Annexures P-3, P-4 and P-5). The suit property was held not to be a park and she was held to be the owner in possession of

suit property. The Municipal Committee also permitted her to raise construction on the suit property, as evidenced by Annexure P-6. She also pleaded that suit of the respondents is barred by principle of limitation and *res judicata*.

16. Learned lower Court observed that the issue as raised by the petitioner to institute a suit under Section 91 CPC is a matter of evidence. They can only be decided on the merits of the case after appreciating the evidence.

17. In my considered opinion, observations made by learned trial Court are well founded. In the present case, petitioner has disputed the correctness of the site plan relied upon by respondents. She has also alleged that respondents have filed the present suit on false averments, whereas the suit property is her private property and not a public park. She is claiming ownership and possession over the suit property in her own right. Moreover has also pleaded that her ownership and possession over the suit property had already been decided and finalized in her favour in previous litigation. Further, current suit has been instituted by few persons with sole motive to harass her, besides raising issues of limitation and *res-judicata*. Contrary to this, the respondents, (who are plaintiff before trial Court), assert that suit property is a park, and a public place, earmarked by the original owner Chunni Lal at the time of carving the colony known as Civil Lines. The suit property was handed over to Municipal Corporation. The original owner, his successor in interest or any assignee have no interest or right in the suit property. The alleged action of the petitioner of raising construction over the suit property is a cause of nuisance for all the residents of the colony including the respondents. Based on the aforementioned assertions, the respondents filed the suit under Section 91 and also moved an application

for permission to institute the suit under the aforementioned section.

18. All these material facts in issue and other relevant facts can only be adjudicated upon and decided on the merits of the case, after permitting the parties to present their respective evidence. The learned trial Court has, thus, rightly observed in this regard in the impugned order. In view of the above discussion, there appears to be no illegality in the jurisdiction exercised by the learned trial Court in allowing the application and giving permission to the respondents to institute the suit under Section 91CPC. The authorities relied by the counsel for the petitioner, in given facts are of no help to the petitioner. Revision is accordingly dismissed.

19. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

05.03.2024
Rimpal

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