

RSA No.2773 of 2010

2024:PHHC:033840

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

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RSA No. 2773 of 2010 (O&M)

Reserved on : 22.02.2024

Date of Decision : 11.03.2024

Lajja Ram & Anr.

....Appellants

VERSUS

Phool Chand & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Krishan Singh, Advocate for the appellants.

Mr. Keshav Pratap Singh, Advocate for the respondent No.1.

ALKA SARIN, J.

1. The present regular second appeal is preferred by defendant Nos.1 and 4 against the judgement and decree passed by the First Appellate Court decreeing the suit of the plaintiff-respondent No.1. The Trial Court had dismissed the suit.

2. The facts in brief are that the plaintiff-respondent No.1 filed a suit for permanent injunction seeking to restrain the defendant Nos.1 to 6 and defendant No.7 from interfering in any manner in his actual, physical possession of the suit property and from constructing any drain through the suit property. It was averred that the plaintiff-respondent No.1 was the owner in possession of the suit property, which was his ancestral property, but the defendants were forcibly trying to construct a drain through the suit property. The plaintiff-respondent No.1 requested the defendants not to take the law into their own hands but they refused. Hence, the suit. The suit was contested by the defendants. In their written statement the defendant Nos.1

to 6 raised preliminary objections and on merits denied the ownership of the plaintiff-respondent No.1. It was alleged that the plaintiff-respondent No.1 was neither owner nor in possession of the suit property but he was infact in unauthorized possession of the Panchayat land. It was further alleged that the drain in dispute was a very old one and was in existence since the formation of the village. It was further stated that a compromise was arrived at between the parties before the Police where the plaintiff-respondent No.1 gave in writing that he has no objection if the gali is constructed, which was to be made Pucca and that the plaintiff-respondent No.1 was now obstructing the Panchayat works. Separate written statement was filed by the defendant No.7 (Gram Panchayat) stating that the plaintiff-respondent No.1 was causing hindrance in the public work and that the drain/nala in dispute was running for the last 100 years and through this drain the daily used and rainy water passed. This nala was on the back side of the houses of the defendant Nos.1 to 6 and being a Katcha nala the water soaked into the foundations of their residential houses and there was every apprehension that it may damage their houses. The plaintiff-respondent No.1 had nothing to do with the drain in dispute and rather the work was being done for the benefit of the general public.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed ? OPP
2. Whether the suit of the plaintiff is not maintainable ? OPD

3. Whether the plaintiff has no cause of action or locus standi to file the present suit ? OPD

4. Relief.

4. Vide judgement and decree dated 13.03.2008 the Trial Court dismissed the suit of the plaintiff-respondent No.1. It was found that the plaintiff-respondent No.1 was owner of the house and was residing there but the defendant No.7 (Gram Panchayat) was not interfering in his possession. However, the defendant No.7 (Gram Panchayat) was only brick-lining the old drain already in existence which plea was not rebutted by the plaintiff-respondent No.1. Rather, the plaintiff-respondent No.1 had come to Court as if a new drain was being made. The Trial Court found that the work of brick lining the drain was being done for the public good at large and the suit had been filed merely with a view to obstruct the public work and thus the plaintiff-respondent No.1 was not entitled to any relief from the Court. The plaintiff-respondent No.1 preferred an appeal against the decision by the Trial Court. Vide judgement and decree dated 08.02.2010 the First Appellate Court accepted the appeal and decreed the suit of the plaintiff-respondent No.1. Hence, the present regular second appeal by the defendant Nos.1 and 4 (defendant-appellants).

5. Learned counsel for the defendant-appellants has contended that the First Appellate Court erred in decreeing the suit of the plaintiff-respondent No.1 and in reversing the judgement and decree passed by the Trial Court. It is argued that making of the drain Pucca was essential as the Katcha drain was damaging the houses of the defendant-appellants. It is further argued that the plaintiff-respondent No.1 was stalling the

development works in the village. An argument was also raised that the plaintiff-respondent No.1 had nothing to do with the suit property and was an encroacher and had not proved his ownership over the suit property and was, therefore, not entitled to the grant on an injunction. Per contra, learned counsel for the plaintiff-respondent No.1 has contended that in the garb of development works the defendants infact wanted to encroach upon his property which could not be permitted in law. According to counsel for the plaintiff-respondent No.1 there was nothing on the record to show that the defendant No.7 (Gram Panchayat) was to complete any public works as was argued. It is submitted that there is nothing on the record to show that the plaintiff-respondent No.1 had encroached upon the property of the defendant No.7 (Gram Panchayat). It was submitted that the plaintiff-respondent No.1 being in lawful possession was competent to file the suit for injunction to protect his possession.

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

7. In this case the plaintiff-respondent No.1 sought an injunction for restraining the defendants from interfering in his possession by constructing a drain on his land. The First Appellate Court found that the possession of the plaintiff-respondent No.1 was established. Though the defendant No.7 (Gram Panchayat) had taken a stand in its written statement of having passed a resolution for making the drain Pucca, no such resolution is available on the record. It was also found that none of the defendants had stepped into the witness box to support the case set-up by them. The existence of any Katcha drain on the land of the plaintiff-respondent No.1 which needed to be made Pucca is not established. The First Appellate Court

found that *“So far as evidence of the defendants is concerned, it is to be noticed that none out of defendants No.1 to 6 has entered the witness box. Even Sarpanch of defendant Gram Panchayat (defendant No.7) has not bothered to attend the court proceedings. Neither existence of Kaccha drain nor existence of street by the side of which such Kaccha drain is allegedly flowing, nor any resolution of the Gram Panchayat taking stock of existence of drains and possible expenditure in making the same Pucca one, has been placed on the file”*. Further, the First Appellate Court also relied upon the report by the Local Commissioner. The Trial Court did not even mention this report in its judgement. Even before this Court the learned counsel for the defendant-appellants has not pointed to any cogent evidence on the record to show the existence of a Katcha drain or about the defendant No.7 (Gram Panchayat) having passed a resolution to make it a Pucca drain. It is to be noted that the defendant No.7 (Gram Panchayat) has not challenged the judgement and decree passed by the First Appellate Court. The defendant-appellants did not even step into the witness box to strengthen the case set-up by them.

8. The present suit was one for simplicitor 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

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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.”

Since the title was not an issue framed in this suit and the plaintiff-respondent No.1 is only seeking protection of his possession, the present suit for injunction alone was competent. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)
JUDGE**

11.03.2024

Aman Jain

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