



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
101

RSA-2817-1995(O&M)
Date of decision: 21.05.2026

Jai Bhagwan

...Appellant(s)

Vs.

Suraj Bhan (since deceased) through LRs & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kulvir Narwal, Advocate
Mr. Amit Sheoran, Advocate
for the appellant.

Mr. Kamal Mor, Advocate
for respondents No.1 to 3, 6 & 7.

NIDHI GUPTA, J.

The defendant No.2 is in Second Appeal against the judgment of reversal whereby suit filed by the plaintiffs/respondents No.1 to 7 for possession, although dismissed by the learned trial Court vide judgment and decree dated 25.11.1994; has been decreed in Civil Appeal by the learned First Appellate Court vide impugned judgment and decree dated 11.8.1995.

2. It was the pleaded case of the plaintiffs that the plaintiffs and defendants are descendants of Udmi son of Dani; and are proprietors of the village Baland and they are having Shamlat rights in the Suit land viz two plots measuring 985 & 353 square yards. Previously, the two plots were jointly



owned and possessed by the parties. Then these plots had been partitioned on 02.07.1960 in brotherhood Panchayat and the portion marked as ABCDEF was allotted to the plaintiffs; while the defendants got the plot marked MNOP and EFGD as shown in the Site Plan. It was contended that the said mutual Partition was written and signed by the plaintiffs and the defendants No.1 and 3 who were representatives of the remaining defendants. There was some dispute between the parties, and the plaintiffs had previously filed the Civil Suit for partition, but that Suit was dismissed as nothing remained to be partitioned. As such, the plaintiffs were in exclusive possession of the disputed plot since 1960, but the defendant No.1 had threatened to encroach upon the plot. As such, plaintiffs had filed Suit for permanent injunction but meanwhile the defendants forcibly took possession of the Suit plot marked as EDCH which belongs to the plaintiffs. Accordingly, the plaintiffs had filed the instant Civil Suit for possession on 08.09.1988.

3. Upon notice, the defendants had put in appearance; and defendants No.1 and 2 had filed written statement and had contested the Suit:

“2. on the grounds that the plaintiff has not given the correct pedigree table and all the sons and heirs of Udmi and Arjan have not been mentioned in the pedigree table. The plaintiffs are proprietors with shamlat rights in the village but they have no right and title in the disputed property. The present suit was filed by the plaintiffs in collusion with the defendants no.3 and 4. Writing dated 2.7.1960 was never signed by the defendants nor it bears the signatures of Balbir Singh defendant. So, that writing is



inadmissible. Moreover, the defendants no. 1 and 3 were never authorised by the co-sharers to sign the same and so that writing is bogus and forged. So, the answering defendants are not bound by the writing. The disputed site is owned and possessed by the answering defendants and their mother and sisters. The disputed land has never fallen to the share of the plaintiff. Two suits earlier filed by the plaintiff have already been dismissed and moreover, the present suit is barred by principle of res judicata. The defendants have already constructed their rooms etc. in the disputed property. So, the present suit for possession is liable to be dismissed as the plaintiff has got no concern with the same.

3. Defendants no. 3 and 4 have also contested the present suit on the grounds that the pedigree table is not correct. However, the parties are the proprietors with the shamlat rights in village Baland. The partition was made even long before 1960 and the site shown with letters DNML has fallen to the share of the answering defendants and they have constructed their houses therein. The plaintiffs want to get the land re-partitioned but they could not succeed and the suit was dismissed."

4. The plaintiffs had filed replication reiterating the averments made in the plaint while denying those made in the written statement.

5. On the basis of pleadings of the parties, following issues were framed by the Id. Sub-Judge, 1st Class, Rohtak vide order dated 25.05.1989: -

"1. Whether the plaintiff is entitled for possession of the suit land as alleged?OPP

2. Whether the parties to the suit are related to each other as shown in pedigree table mentioned in para no.1 of the plaint?OPP



3. *Whether the property in dispute fell to the share of the plaintiff in partition as alleged?OPP*
4. *Whether the defendants have taken possession of the suit land by force as alleged?OPP*
5. *Whether the suit is barred as per principle of resjudicata as alleged?OPD*
6. *Whether the suit is barred as per provisions of order 2 Rule 2 CPC?OPD.*
7. *Whether no cause of action has occurred to the plaintiff to file this suit?OPD*
8. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
9. *Whether defendants are entitled to special costs U/S 35 A CPC?OPD*
10. *Relief."*

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the Id. Sub-Judge, 1st Class, Rohtak had dismissed suit of the plaintiffs with costs vide judgment and decree dated 25.11.1994.

7. However, Civil Appeal filed by the plaintiffs was accepted by the learned Additional District Judge, Rohtak vide impugned judgment and decree dated 11.08.1995 as follows: -

"20. As a net result the appeal succeeds, the judgment and decree of the trial court are set aside. The suit of the plaintiff is decreed. A decree for possession of the suit land is hereby passed in favour of the plaintiffs and against the defendants with costs throughout which are assessed at Rs. 1000/- to be paid by the respondent-



defendants to the appellant-plaintiff Suraj Bhan to the extent of Rs. 500/- and the remaining cost of Rs. 500/- to be shared by all the plaintiffs equally.”

8. Hence, present second appeal by the defendant No.2.
9. It is inter alia submitted by learned counsel for the appellant that learned First Appellate Court has lost sight of the evidence on record i.e. the first partition Suit filed by the plaintiffs/respondents which was dismissed i.e. Civil Suit No.637 dated 09.10.1982 due to the reason that the property i.e. plot measuring 985 & 353 square yards was neither found to be joint nor ancestral and therefore, the question of partition on the basis of the alleged writing does not arise. At the appellate stage, the Suit was dismissed as withdrawn by the respondents, but the fact remains that there was no alleged partition nor alleged writing of partition was there. Suit No.606 filed on 19.11.1982 by the plaintiffs/respondents for permanent injunction claiming themselves to be the owner in possession of the suit property and that Suit was also dismissed as the respondent was neither found to be in possession nor owner and a Suit for permanent injunction includes the relief of declaration and possession as held in 1984 P.L.J. 239; and the judgment and decree was appealed against; and the appeal No.84/13 of 1987/88 was dismissed and the plaintiff sought withdrawal of the Suit and the permission of withdrawal was granted but no permission to file fresh Suit was granted or obtained. Thus, the Suit in question regarding which the Regular Second Appeal is before this Court was not maintainable keeping in view the provisions of Order 2 Rule 2 read with Order 23 Rule 1 C.P.C.



10. It is further submitted that in regard to these two plots, the respondents are filing and dragging the present appellants in different ways in litigation and the alleged partition deed does not bear the signatures or thumb impression of the contesting defendants now appellants before this Court and a forged document has been produced by the plaintiffs and in case the alleged Partition Deed would have been there the first partition Suit would not have been filed by the respondents.

11. It is accordingly prayed that *“the judgment and decree passed by the learned Additional District Judge, Rohtak be set aside and that of the learned trial Court be restored and the appeal of the appellant be allowed with costs in the interest of justice, fair play, and good conscious.”*

12. Per contra, learned counsel for the plaintiffs/respondents No.1 to 7 herein, opposes the submissions advanced on behalf of the appellant and submits that the learned First Appellate Court in Para 10 of the impugned judgment has categorically recorded that at the time of arguments, issues No.6 to 9 were not pressed by the defendants before the learned trial Court. As such, the contention of the appellant that Suit was barred by res judicata could not be entertained. Learned counsel also refers to the findings recorded by the learned First Appellate Court in Para 18 of the impugned judgment to submit that clear and cogent reasons have been given for non-suiting the appellant which have not been controverted by the appellant. It is accordingly prayed that the present appeal be dismissed being without merit.



13. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find merit in the submissions advanced on behalf of the appellant.

14. A brief factual background in the present case would be helpful. The predecessor-in-interest of the present plaintiffs had firstly filed Civil Suit No.637 dated 09.10.1982 against the predecessor-in-interest of the present defendants seeking decree of possession by way of partition. As pointed out by the plaintiffs in the plaint itself, the said Suit was dismissed vide judgment dated 14.10.1982 (Ex.D3 - available at page 67-75 of the LCR) as “*nothing remained to be partitioned*”. Moreover, a clear finding of fact was given by the Civil Court to the effect that the suit property was neither joint nor ancestral; therefore, question of partition did not arise.

15. The plaintiffs had then filed second Civil Suit No.606 dated 19.11.1982 for permanent injunction claiming themselves to be owners in possession of the suit property. The said Suit also came to be dismissed with costs by the learned Additional Senior Sub Judge Rohtak vide judgment dated 22.09.1987 (Ex.D6 - available at page 90-93 of the LCR) as it was found that “*The plaintiff is neither owner in possession of the disputed plot which is owned and possessed by the defendant*”.

16. Against the judgment dated 22.09.1987 (Ex.D6) passed in Civil Suit No.606 of 1982, plaintiffs had filed Civil Appeal 84/13 of 21.10.1987. The said Civil Appeal was dismissed as withdrawn on the statement of learned



counsel for the plaintiff to the effect that defendant has possession over the suit property. Accordingly, the said Civil Appeal 84/13 of 21.10.1987 was dismissed as withdrawn and even Suit of the plaintiff was held to be deemed to have been dismissed as withdrawn vide order dated 04.08.1988 (Ex.PH - at page 59 of the LCR) passed by Id. Additional District Judge, Rohtak, as follows:-

“Statement of counsel of the appellant recorded. In view of the statement of the counsel for the appellant. Suit of the plaintiff shall be deemed to have been dismissed as withdrawn. With this modification, the appeal of the appellant is also dismissed as withdrawn. File be consigned to the record room, after due compliance.”

17. It is thereafter that the plaintiffs filed the present/3rd Civil Suit No.570 dated 08.09.1988 for possession. As evident from the above order dated 4.8.1988, no permission was granted to the plaintiff by the District Court to file afresh on the same cause of action, and in respect of the same suit land. Therefore, Suit of the plaintiffs is clearly barred under Order 2 Rule 2 CPC. Contention of the respondent that issue no.6 was not pressed, is of no help as the present being a legal issue can be examined and adjudicated upon even without pleadings.

18. The above sequence of events would also establish that the contention of the appellant that the plaintiffs are repeatedly dragging the appellant into unnecessary litigation on one pretext or the other, is correct. Admittedly, vide the various judgments and decrees referred to above, findings



of fact have been returned by the Civil Courts that suit property is neither joint nor ancestral; therefore, question of partition doesn't arise; and that plaintiff is neither owner nor in possession of the suit property. Therefore, plaintiffs have no locus to file the present suit. Even at the time of admitting the present appeal, learned counsel for the respondent has admitted possession of the appellant over the suit property. It has been contented/alleged by the respondents that appellant had taken forcible possession. However, there is not even a smidgen of evidence to this effect.

19. Yet, learned First Appellate Court has non-suited the appellant on the reasoning contained in Para 18 of the impugned judgment dated 11.08.1995, which reads as follows: -

"18. In the light of the above authorities, when facts of this case at hand are analysed, it becomes amply clear that suit No.637 was dismissed in terms of judgment Ex. D3 on 14.10.1982 wherein it was held that parties to that suit which happened to be predecessor-in-interest of the parties of the present litigation were in exclusive possession of the properties coming to their shares in terms of the partition having taken place in 1960 and with respect to which writing Ex. D1 of suit No.637 was prepared. Therefore, on 14.10.1982 appellant-plaintiffs' predecessors in interest namely Dalip Singh was in possession. Dalip Singh instituted the suit No.606 of 19.11.1982 for a decree of permanent injunction, as such this suit was instituted within one month of the judgment Ex. D3 of suit No. 637 dated 14.10.1982. It is not the case of the respondent-defendants that they came in possession



of the suit property after 14.10.1982 and before 19.11.1982. Therefore, the necessary irresistible conclusion is that respondent-defendants came in possession of the suit property after institution of the suit No.606. Therefore, the withdrawal of the previous suit for injunction in no way can be taken to be a bar on the plea of abandonment of any right of cause by the appellant-plaintiffs with respect to the suit property. The present suit of the appellant-plaintiff is for possession on the basis of title.

Present suit was instituted on 8.9.1988 which is well within six years of the date of judgment Ex. D3, dated 14.10.1982 and hence the suit for possession on the basis of title of the appellant-plaintiff is well within 12 years of the date of dispossession. Accordingly, the present suit is maintainable and further as appellant-plaintiffs are proved to be dispossessed from the suit plot within 12 years from the date of dispossession, therefore, they are entitled for a decree for possession.”

20. It is my view that the above said reasoning of the learned first Appellate Court is puerile and unsustainable. The First Appellate Court has firstly held that in Civil Suit No.637 dismissed vide judgment dated 14.10.1982 (Ex.D3), it was held that predecessor-in-interest of the plaintiffs were in exclusive possession of their respective shares in terms of the partition of 1960. However, the said finding of the learned First Appellate Court is based on a misreading of the judgment dated 14.10.1982 (Ex.D3), relevant extract of which is as follows:-

“9. In order to discharge the onus, the plaintiff has examined Murari (PW2), Dharma (PW3) in addition to the statement of



Dalip Singh (PW1), plaintiff, appearing as his own witness. Dalip Singh (PW1), plaintiff, however, admits in the first sentence of cross-examination that their entire land is separate from a time before his memory goes. He further admits that their khewat is also not joint. He further admits that in consolidation, separate plots were given to the parties. He further admits that they have separate houses and that separate votes stand prepared there. He further admits that their hearth and home are also separate. He further admits that separate houses of the parties stand constructed on the disputed plots. He further clarifies that the area in his possession has no concern with the defendants. He further admits that ever since they have separate property.

10. Murari (PW2) similarly admits in cross-examination that the parties have separate houses and separate 'bethaks' and separate girdwar and that he is seeing these separate from the time of his birth. He further admits that the agricultural holding of the parties are also separate.

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13. The plots are said to be ancestral property. However, no survey number of these plots is given in the plaint. It is not shown shown which ancestor as per pedigree table set up by the plaintiffs owned these plots. The plaintiff inducted in rebuttal list istemal malkhan. There is no reference to it in the plaint and in any case it cannot be permitted to be given in rebuttal.

14. The evidence of the defendants, which consists in the statement of Kanahaya (DW1), Lakhi Ram (DW2), Gulab Singh (DW3), Raghbir Singh (DW4) and Parbhu (DW5) is that the plots are not joint and that everyone is in possession of his share separately and that he has made construction over it. The



defendants have also placed on file the writing (Ex.D1), which according to them, depicts partition sometime in the year 1960. It appears to me that even without reference to the evidence of the defendant, the case of the plaintiff is demolished by the statements in cross-examination of the witnesses of the plaintiff. Shri P.N. Jain Advocate cited 1906 Punjab Records No. 71. It is on different facts.

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19. It has come in the statement of witnesses of defendants that they are in separate possession and that their houses etc. stand constructed over there. There is, however, no precise evidence about the quantum of investment and as such no precise idea of investment can be made. This, however, has no effect because the plaintiff himself has failed to show that the property is joint and ancestral. The issue in this sense and to this extent is decided against the defendants."

21. It is but trite that if the parties were already in possession of their respective shares, with or without partition of 1960, where was the occasion for the plaintiffs to file Civil Suit No.637 dated 9.10.1982, for partition. It is the plaintiffs' own case, and evidence noted above, that they are in possession of their respective shares since long time. In fact, it is not disputed by the plaintiffs that defendants have raised construction over their share from their own funds. It is befuddling that given the above noted unambiguous and unequivocal evidence of not just the defendant, but both the parties, it is not clear as to how the first Appellate Court has come to the '*necessary irresistible conclusion*', that defendant got possession over the suit property after



institution of Civil Suit no. 606. Clearly, reason of the first Appellate Court is entirely based on surmises and conjectures, and cannot be sustained.

22. This is especially so in view of the fact that plaintiffs have miserably failed to show as to when, how and in what manner were they 'forcibly dispossessed' by the defendants as alleged. Despite several Court queries, learned counsel for the respondents/plaintiffs is unable to enlighten this Court on this aspect. In these facts, reference may be made to judgment of this Court in **"Madan Mohan Vs. Arun Kumar & Others"** Civil Revision No.3443 of 1982 decided on 08.12.1983, wherein it is held that:-

"(b) Injunction, suit for-Plaintiff not required to specifically claim declaration of his title to property or right to remain in its possession-Such a relief always deemed to be included in prayer for a permanent injunction.

(c) Civil Procedure Code, Order 39 Rules 1 and 2-Plaintiff in a suit for permanent injunction restraining defendant from dispossessing him forcibly claiming himself to be in possession as a tenant and entitled to continue as such till evicted in accordance with law-Defendant held to be entitled to restoration of possession by Sessions Judge under Section 145 Criminal Procedure Code-Order under Section 145 Cr. P.C always a tentative order subject to decision of Civil Court on question of title and right to possession of parties concerned – Deprivation of possession of immovable property pendente lite usually presumed to cause irreparable loss – Denial of interim injunction most likely to cause irreparable loss to plaintiff – Criminal Procedure Code, Section 145."



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3. *The order passed under section 145 of the Code is always a tentative order subject to the decision of civil Court on the question of title and the right to possession of the parties concerned. No doubt the plaint is not happily drafted but its sum and substance is that the plaintiff has claimed himself to be a tenant and entitled to retain possession of the property in dispute till he is elected therefrom in accordance with the provisions of the Act. It is well-established that in a suit for injunction the plaintiff is not required to specifically claim a declaration of his title to the property or the right to remain in its possession. Such a relief is always deemed to be included in the prayer for a permanent injunction. The suit, therefore, in substance is to establish the right of the plaintiff to continue in possession as a tenant which necessarily means that he is not liable to be evicted therefrom in pursuance of the order of a criminal Court under section 145 of the Code. The first ground urged, therefore, has no merit.*

4. *As regards the second contention that the petitioner cannot be said to be causing any injury by enforcing a lawful order and as such no temporary injunction can be granted under Order 39, rule 2, Civil Procedure code, it would suffice to mention that after the enforcement of the 1976 Amendment Act it has been provided under Order 39 rule 1(c) that an injunction can be granted to restrain the defendant from dispossessing the plaintiff during the pendency of the suit. The earlier view expressed by certain High Courts that when the defendant is seeking to dispossess the plaintiff from the property in dispute in pursuance of an order passed by some authority in accordance with law no temporary*



injunction can be granted as the act of the defendant does not amount to causing of an injury to the plaintiff within the meaning of Order 39, rule 2, Civil Procedure Code, no more holds the field in view of the introduction of the said clause in rule 1 of Order 39, Civil Procedure Code.

5. Prior to the insertion of clause (c) an ad interim injunction restraining the defendant from dispossessing the plaintiff could not be granted under any of the then existing clauses of rule (1). Under rule (2) it was rather difficult to hold that a defendant by seeking possession in pursuance of an order passed by a competent Court or other authority was causing any injury to the plaintiff for the causing of an injury necessarily implied the doing of some unlawful act. There is never a dearth of cases where in spite of an order of a competent authority or Court of limited jurisdiction, the plaintiff has a triable cause and a good prima facie case. The deprivation of possession of immoveable property pendente lite is usually presumed to cause irreparable loss. The case in hand is a typical specimen where the denial of an interim injunction is mostly likely to cause irreparable loss to the plaintiff. As noticed above, he is running his business in the premises in dispute. If he dispossessed therefrom he may not be able to secure another premises to run his business. In case he is able to do so, it may not be worthwhile at all for him to re-occupy these premises after the lapse of a long period which in the present set litigation is likely to take to conclude. To prevent the miscarriage of justice in such like cases, the Supreme Court in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, A. I. R. 1962 S. C. 527 permitted resort to section 151, Civil Procedure Code and ruled that the provisions of Order 39 were not exhaustive and the Courts have



inherent jurisdiction to issue temporary injunction in circumstances not covered by the provisions of Order 39, Civil Procedure Code. To put the matter beyond the pale of any shadow of doubt, the Legislature has stepped in and added clause (c) in rule (1) authorising the Court to pass temporary injunctions to restrain the defendant from dispossessing the plaintiff from the suit property if the interest of justice so require, so there is no merit in the second contention as well. No ground, therefore, has been made out to interfere with the impugned order and this petition is accordingly dismissed leaving the parties to bear their own costs. The trial Court is, however, directed to dispose of the suit as expeditiously as possible."

23. Thus, from the above said facts, it is established that the plaintiffs are neither the owners, nor in possession of the suit property. As noted by the learned trial court, plaintiffs have failed to prove their title over the suit property. Rather, it has been owned and possessed by the defendants.

24. Relevant findings returned by learned Sub-Judge, 1st Class, Rohtak in para 14 of judgment dated 25.11.1994 are as hereinbelow:-

"14. No doubt, in this case defendant, Gulab Gingh and Daya Singh supported the case of the plaintiff but now the dispute regarding the suit land, is between plaintiffs and defendants no.1 and 2. Pedigree table shows the relationship of the parties, but there is no document on file that the disputed land is the ancestral of the parties and the statement of Dws clearly show that the defendants have constructed over the property in dispute since last more than 15 years. The plaintiff in the year 1980 is claiming



that the disputed land is joint of the parties, so it can not be said that any partition was affected in the year 1960 regarding the suit land and if the partition was affected then plaintiff should not have filed the suit for partition in the year 1980 by concealing the writing Ex.PA. The only title, which the plaintiff had regarding the suit land is Ex. PA, which he himself did not put forward rather he has filed a suit for partition without mentioning the said partition, which was in possession. Since, the said partition is not proved and the signatures have been disputed by the defendants and there is no report that these signatures are of the defendants, as no Expert has been examined nor it has been got compared to show that the defendants have signed those writing. So, it is held that the disputed land has not fallen to the share of the plaintiff in partition. The defendants have already constructed over the property in dispute long time back and there is no reason to admit this fact that they have forcibly taken the possession of the suit property after the institution of the earlier suit. The defendants are already in possession of the suit property as owner and, therefore, it is held that the defendants have not taken the possession of the suit land by force. It is also not proved that the property in dispute has fallen to the share of the plaintiff in partition. So, it is further held that the plaintiff is not entitled for the possession of the said land. So, all these issues no.1 to 4 are decided in favour of defendants and against the plaintiffs.”

25. In face of the above facts, reasoning of the first Appellate Court that matter in issue in suit no.637 of 1982 was the plea of partition of joint properties; whereas matter in issue in the present suit is totally different; and



therefore suit is not barred, as cause of action in both suits is not identical, is patently incorrect. Learned first Appellate Court is also in error in holding that present suit is maintainable as plaintiffs have proved to be dispossessed from the suit plot within 12 years from date of dispossession; and therefore, they are entitled to possession. The discussion above establishes that the above said findings of the first Appellate Court are entirely contrary to the facts, evidence, and findings on record.

26. Learned counsel for the respondents/plaintiffs is unable to dispute or controvert the aforesaid facts and findings.

27. In view of the above, present Regular Second Appeal stands **allowed**; and judgment and decree dated 11.8.1995 passed by the Additional District Judge, Rohtak is set aside; and that of learned trial Court is restored. Suit of the plaintiffs stands dismissed.

28. Pending application(s) if any also stand(s) disposed of.

21.05.2026
Sunena

(Nidhi Gupta)
Judge

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