
(1974) 03 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 546 of 1973

Sant Singh and Others

APPELLANT

Vs

Des Ram and Others

RESPONDENT

Date of Decision : 14-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1974 P&H 276

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

1. This petition u/s 115 of the CPC seeks a revision of the order dated the 8th of March, 1973, passed by Shri K. K. Kataria, Subordinate Judge, 2nd Class, Ludhiana, in a suit filed by the petitioners against the respondents for the grant of a permanent injunction restraining the latter from making any construction on four pieces of land forming part of Khasra Nos. 45/5, 6 and 7 situated in village Karabara, District Ludhiana, on the basis of the allegations that the petitioners were tenants in possession of the said three Khasra numbers which they obtained on allotment from the Government and that the respondents had started collecting materials for construction of building at the said four pieces of land without any right or interest therein. With the plaint was attached a plan showing in red the area covered by Khasra Nos. 45/5, 6 and 7. The said four pieces were shown in yellow, one of them in Khasra No. 45/5, two in Khasra No. 6 and the fourth in Khasra No. 7. Each one of them forms a small fraction of the Khasra number in which it is situated. A foot-note appended to the plan states that the disputed land where "houses are under construction" is shown in yellow.

2. In their written statement the respondents raised preliminary objections including one to the effect that the suit was bad for multifariousness and, therefore, deserved dismissal. On merits it was stated that each of the respondents had been allotted a plot in the said three khasra numbers on the 19th of September, 1969, that the plaintiffs had no interest in the said Khasra

numbers and that each of the respondents was constructing a building on the state allotted to himself.

3. Six issues were framed in the case on the 16th of November, 1972. Issue No. 1 which was treated as a preliminary issue runs thus:

"Whether the suit of the plaintiff is bad for multifariousness and causes of action?"

4. The issue is not happily worded and the words "and causes of action" appear to have crept in through a slip of the pen. However, it is not the case of either party that the language of the issue was not properly understood and has prejudiced it.

5. The issue was decided by the learned Subordinate Judge against the petitioners through the impugned order. He took note of the fact that although four pieces of land were alleged by the petitioners to have been trespassed upon by the respondents, the plaint and the plan were silent about the particular defendants who were making construction on each specific piece. He further noted that in their joint written statement the respondents had contended that each one of them had been allotted a separate piece of land and was constructing a building thereon. He then made a reference to the provisions of Rule 3 of Order 1 of the CPC which runs this:

"3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise."

6. Analysing these provisions the learned Subordinate Judge held that one of the conditions which must necessarily be fulfilled in order to bring a case within their ambit was that the right to relief alleged to exist against the defendants must arise out of the same act or transaction or series of acts or transactions. He went on to say that in the plaint no right to relief arising out of the same act or transaction, etc; was alleged to exist and that, therefore, the provisions of Rule 3 above extracted were not applicable to this case. The finding given was that the suit was multifarious and it is that finding which is challenged by the petitioners.

7. I have heard learned counsel for the petitioners and am of the opinion that no fault can be found with the impugned order. The learned Subordinate Judge was quite right in observing that one of the conditions which must be fulfilled before the provisions of Rule 3 could be applied to a case was that a right to relief arising out of the same act or transaction or series of acts or transactions must be alleged to exist. In the plaint all that is stated in this connection is contained in paragraph 3 thereof which states:

"3. That the defendants have started collecting material for constructing certain portion in the suit land at the spots shown on the map attached."

As already pointed out, four separate pieces of land are shown in yellow in the plan attached to the plaint. However, neither the plaint nor the plan state the names of any particular defendant or defendants as having trespassed upon each specific piece. This means that no allegation has been made by the plaintiffs that any right to relief against the respondents has arisen out of the same act or transaction or series of acts or transactions. On the other hand, the respondents according to him, are trespassers. And if that be so, each one of them would be answerable for his own act of trespass which would have nothing to do with the trespass which any of his co-respondents might be shown to have indulged in. On the allegations made by the plaintiffs, therefore, what is deducible is that the right to relief alleged to exist against the respondents arises not out of the same act or transaction or series of acts and transactions. The suit is, therefore, multifarious and one not permitted by Rule.3.

8. For the reasons stated, the impugned order is affirmed and the petition is dismissed with costs. The records shall be transmitted at once to the trial Court which shall allow the plaintiffs to elect against which of the defendants they shall proceed in the present suit. Counsel's fee Rs. 50/-

9. Petition dismissed.