
(1986) 07 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1325 of 1976

Umrao Singh

APPELLANT

Vs

Lalji and ors.

RESPONDENT

Date of Decision : 07-07-1986

Acts Referred:

Citation : (1987) PLJ 236 : (1988) 1 RRR 477

Hon'ble Judges : B.S.Yadav, J

Advocate : Balwant Singh Gupta, Advocate., Advocates for appearing Parties

Judgement

B.S. Yadav, J.—The present appellant Umrao Singh had filed this suit for permanent injunction restraining defendants 1 and 2 (now respondents 1 and 2) respectively from interfering with his possession as well as the possession of the proforma defendant Sardara (now respondent No. 3) over the site in dispute, including the house standing thereon and delineated by letters W, X, Y and Z in the plea filed with the plaint. According to the allegations in the plaint, the plaintiff and proforma defendant Sardara have been in possession of the site in dispute since the time of their ancestors. Two chappars, one pucca kotha, chabutra, verandahs and mangers were in existence on the site in dispute since long. The plaintiff resided on this site and also tethered his cattle. Defendant No. 1 in collusion with defendant No. 2, Gram Panchayat, obtained an order in its favour on 24th September, 1971 from the Director Consolidation, after representing that the site in dispute was agricultural land. Under the cover of that order the said defendants were bent upon to dispossess the plaintiff from this site. The Director, Consolidation, had no jurisdiction to pass any order in respect of the residential sites and therefore, the said order is void and is not binding upon the plaintiff.

2. The suit was contested by defendants No. 1 and 2 who filed separate written statements. They pleaded that the plaintiff and the proforma defendant Sardara were not the owners of the site in Dispute, nor any one of them was residing on this site. The Director, Consolidation, passed the impugned order under Section

42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The Civil Court had no jurisdiction to entertain the suit. the other allegations of the plaintiff were also denied by him.

3. Upon the allegation of the parties, the learned trial Court framed the following issues :

(1) Whether the plaintiff is the owner and in possession of the land in dispute as alleged ? OPP.

(2) Whether the Order of the Director, Consolidation of Holdings dated 24.9.71 is without jurisdiction illegal, wrong and as such not binding upon the rights of the plaintiff as alleged in para 2 of the plaint ? OPP

(3) Whether this Court has jurisdiction to try the suit ? O.P.P

(4) Whether the plaintiff has no locus standi to file the suit ? O.P.D.

(5) Whether the principle of res judicata applies in the present suit ? O.P.D.

(6) Relief.

Under issue No. 1 it was held that though the plaintiff and proforma defendant has not been able to prove their ownership over the site in dispute but they were in possession thereof. Issues No. 2 and 5 have been treated as preliminary and were decided in favour of the plaintiff. Under issue No. 2 it was held that the order of the Director, Consolidation was without jurisdiction. Under issue No. 5 it was held that the impugned order of the Director did not operate as res judicata. Under issue No. 3 it was held that the Civil court had jurisdiction to try the suit, as the plaintiff was claiming a decree for permanent injunction to try the suit, as the plaintiff was claiming a decree for permanent injunction for restraining defendants No. 1 and 2 from dispossessing him from the suit property. Issue No. 4 was also found in favour of the plaintiff. As a result of the above findings, plaintiff's suit was decreed.

4. Feeling aggrieved, Lalji defendant filed an appeal which was heard by the learned Senior Subordinate Judge (with Enhanced Appellate Powers), Narnaul. He confirmed the finding of the learned trial Court under issue No. 1. The counsel for Lalji appellant had made a statement to the effect that the plaintiff and Sardara were in possession of the site in dispute. He upset the findings of the learned trial Court and held that the participation of Sardara in the proceedings under Section 42 of the Act was effective representation on behalf of the plaintiff also who was his real brother and a cosharer in the suit site. he did not give any specific finding on Issue No. 3. In view of the finding under Issue No. 1, he dismissed the appeal. Aggrieved against the finding rendered under Issue No. 2, by the learned lower Appellate Court, the plaintiff has come to this Court in second appeal.

5. A preliminary objection has been taken on behalf of respondent No. 1. His learned counsel has argued that the plaintiff had filed a suit for permanent

injunction restraining defendants no. 1 and 2 from interfering in his possession as well as of defendant No. 3 Sardara over the plot in dispute and the said relief has been granted to him and, therefore, it cannot be said that he is aggrieved of the decree and hence he has no right of appeal. I am of the opinion that the said argument has force.

6. In the plaint, the plaintiff's contention was that he and Sardara were owners in possession of the site in dispute and the order of the Director, Consolidation dated September 24, 1971 was without jurisdiction. Various grounds were taken up for challenging order of the Director Consolidation. The former plea is the subject matter of Issue No. 1 while the latter one of Issue No. 2. However, no relief was prayed for in respect of the Director's order. The plaintiff claimed a relief of permanent injunction in respect of his possession as well as of Sardara. As noticed earlier, under Issue No. 1 the trial Court held that though the plaintiff has not been able to prove his ownership over the site in dispute but he and Sardar had been proved to be in possession. Issue No. 2 was also found in favour of the plaintiff. The plaintiff's suit was consequently decreed in its entirety. The learned lower appellate Court, in appeal filed by the contesting defendant No. 1, has upset the finding of the trial Court under Issue No. 2 and has held the order of the Director to be a valid one. The finding under Issue No. 1 was confirmed and the appeal was accordingly dismissed. The finding under Issue No. 2 has not been embodied in and does not form part of the decree passed by the lower Courts.

7. The learned counsel for the appellant argued that in spite of the fact that the suit was decreed, the plaintiff is aggrieved of the decree as the finding under Issue No. 1 has cast cloud on his title. In support of his argument he had cited Union of India, Ministry of Food and Agriculture (Dept of Food) New Delhi v. Pearl Hosiery Mills and others, A.I.R. 1961 Punjab 281, wherein it was remarked :

"S. 96, Civil Procedure code, does not in terms lay down as to who can file an appeal; it does not prescribe that it is only that person against whom a decree has been passed or against whom a relief has been granted, who can come in appeal. Any person who can show that he is aggrieved by the decree, can file an appeal against the same. For determining as to who is an aggrieved person, one has to look all the circumstances of the case and the substance of the decree passed.

It was held by Woodroff, J., in Krishna Godar v. Mohesh Chandra Saha, 9 Cal. W.N. 584, that `..... a defendant has the right to appeal notwithstanding that the suit has been dismissed as against him, if he is aggrieved by the decree."

The question whether a party is aggrieved by a decree is a question of fact to be determined in each case according to its peculiar circumstances." There is no dispute with the above proposition. However, in the present case the plaintiff cannot be said to be aggrieved of the decree. It is immaterial if the order of the Director, Consolidation is valid or invalid. The plaintiff has been granted a decree

for permanent injunction against defendant Nos. 1 and 2. Even if the order of the Director is allowed to stand the plaintiff and defendant No. 3 cannot be ejected from the site in dispute in the face of the decree. It is futile to argue that under the cover of the order of the Director, the defendant could dispossess the plaintiff from the site in dispute. The decree has been passed after the order of the Director Consolidation had come into existence.

8. The learned counsel for the appellant argued that a prayer for permanent injunction restraining the other party from dispossessing the plaintiff from a property includes a claim for declaration of title to property also. In support of this contention he has cited Madan Mohan v. Arun Kumar and others, 1984 P.L.J. 239 : 1984(2) R.C.R.(Criminal) 26 : 1984(1) R.C.R.(Rent) 529 : 1984 R.R.R. 59 This ruling, of course, supports the contention of the plaintiff but it is not relevant in the present case. Under issue No. 1, the trial Court had held that the plaintiff and defendant No. 3 Sardara had not been proved to be owners of the site in dispute. That finding was not agitated by the plaintiff before the learned lower appellate Court in the appeal which had been filed by defendant No. 1 nor he had filed crossobjections in that appeal. Therefore, the finding under Issue No. 1 that the plaintiff and Sardara are not the owners of the site in dispute stands. In fact that finding has not been agitated even before me. Only the finding under Issue No. 2 was agitated. As noticed earlier the finding under that issue becomes immaterial when the plaintiff's suit had been decreed.

9. Hence, it is held that the plaintiff cannot be said to be aggrieved of the decree passed by the lower appellate Court. Consequently, the present appeal fails and the same is hereby dismissed with no orders as to costs.