

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No. 2566 of 2000

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Date of decision: 17.4.2006

Muni Ram and another

... Appellants

v.

Khushi Ram and others

... Respondents

....

Present: Mr. Jaiveer Yadav, Advocate for the appellants.

Mr. Sanjay Vij, Advocate for the respondents.

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S.S. Saron, J.

This Regular Second Appeal has been filed by the plaintiffs-appellants against the judgment and decree dated 19.05.2000 passed by the learned Additional District Judge, Rewari, whereby the appeal of the plaintiffs-appellants against the judgment and decree dated 22.07.1998 passed by the learned Civil Judge (Senior Division), Rewari has been dismissed.

The plaintiffs-appellants filed a suit for declaration claiming ownership and possession of a piece land situated within the Lal Dora of village Rampura, Tehsil and District Rewari, which is stated to be their ancestral land. It is alleged that the said plot fell to the share of the plaintiffs-appellants and Khushi Ram (proforma-defendant No.4) in a family settlement which is stated to have taken place in the year 1975. Since then

the plaintiffs-appellants are owners in possession of the said plot. Earlier Ghisha Ram Lambardar (since deceased) and Kalu Ram son of Gopal Singh, Mangat Ram son of Salag Ram and Puran Chand son of Pattu Ram (defendants No.1 to 3) along with Shiv Lal son of Kalu Ram filed a suit against Khushi Ram (defendant No.1 in the said suit and defendant No.4 herein) and the Gram Panchayat Rampura through its Sarpanch (defendant No.2 in the said suit). In the said suit the present plaintiffs were not impleaded as parties. In any case, the said suit bearing suit No.86 of 1978 was decreed on 31.3.1980 (Ex.D.2). Appeal against the same was dismissed by the learned Additional District Judge, Narnaul on 14.11.1984. The matter came up to this Court in R.S.A. No.434 of 1985 which was dismissed on 20.5.1985 (Ex.D.1). The plaintiffs-appellants on coming to know of the passing of the decree dated 31.3.1980 (Ex.D.2) and the fact that defendants were bent upon taking possession of the property filed the present suit, out of which this appeal arises, assailing the said decree by taking the stand that the same was not binding on them and even otherwise is illegal, void and without jurisdiction as the plaintiffs were not parties in the said suit and the decree had been passed at their back. The defendants-respondents, it is alleged wanted to interfere in the peaceful possession of the plaintiffs-appellants under the garb of the decree dated 31.3.1980 (Ex.D.2) passed in case titled Lambardar Ghisha Ram and Ors. Vs. Khushi Ram and another, Civil Suit No.86 of 1978. The said civil suit was filed by Ghisha Ram, Lambardar and four others against Khushi Ram (Defendant No.4) and Gram Panchayat, Rampura in a representative capacity under Order 1 Rule 8 read with Section 91 of the Code of Civil Procedure ('CPC' - for short) alleging

that the Khushi Ram and also the Gram Panchayat, Rampura (defendants No.1 and 2 respectively in the said suit) be restrained from making any encroachment over the plot in question. The said plot is subject matter of the present suit as well. In the earlier suit it was pleaded by the plaintiffs therein that there is a 'Sthan' and a 'Chabutra' of Panch Peer situated in the Lal Dora of Village Rampura which was shown in the site plan attached with the suit by Mark-ABCD. The residents of Village Rampura, it was stated, gathered there for Satsang etc. Khushi Ram (defendant No.4) wanted to unauthorizedly possess the property in dispute and demolish the 'Chabutra'. In case he succeeded in doing so and raising construction over it, the inhabitants of the village would suffer irreparable injury. Accordingly, a restraint was sought in the said suit against Khushi Ram and Gram Panchayat Rampura from taking possession of the land in dispute and raising construction over it. In case Khushi Ram (defendant No.4) was successful in raising construction, it was prayed that a decree for mandatory injunction be passed. The defendant Khushi Ram contested the earlier suit filed by Ghisha Ram, Lambardar and others and it was stated that the site 'Sthan Panch Peer' was at some height. Besides, it was denied that there was any open place around the site 'Panch Peer' where any religious gathering takes place. The learned Civil Judge First Class decreed the suit of the plaintiffs Ghisha Ram and others on 31.3.1980. Issue No.1 in the said suit which was to the effect whether the site is used by the villagers for the last over 50 years for holding Satsang and for other ancillary purposes as alleged was decided in favour of the plaintiffs Ghisha Ram and others. The said decree dated 31.03.1980 was upheld by the learned Additional District

Judge, Narnaul vide judgment and decree dated 14.11.1984, Khushi Ram- (defendant No.1 in the earlier Civil suit and Defendant No.4 in the present suit) filed Regular Second Appeal No.434 of 1985 in this Court, which was dismissed on 20.05.1985 (Ex. D.1). In view of the earlier decree dated 31.03.1980 (Ex. D-2), the present suit of the plaintiffs-appellants has been dismissed by both the courts below.

Shri Jaiveer Yadav, Advocate, learned counsel for the appellants has contended that the learned Courts below have wrongly held that the judgment and decree dated 31.03.1980 is binding on the plaintiffs-appellants, in the present case. In fact, they were not a party in the said suit. In any case, it is contended that no permission was granted to file the suit in a representative capacity in terms of Order 1 Rule 8 CPC. Besides, no proper notice was served on the appellants in terms of Order 1 Rule 8 (2) CPC. It is contended that the list of inhabitants of Village Rampura was not furnished with the suit and the Gram Panchayat Rampura was arrayed as defendant No.2 through its Sarpanch and not through its inhabitants. Besides, it is contended that ownership of possession of inhabitants of Village Rampura was neither claimed nor pleaded or proved by the plaintiffs. No issue in this regard was framed. The decree dated 31.3.1980 (Ex.D.2) that was passed merely granted a mandatory injunction for removal of the encroachments. Besides, a decree for permanent injunction was passed restraining the defendants therein from making any encroachments over the site ABCD shown in the site plan (Ex.PW.5/1) attached with the plaint.

In response, Shri Sanjay Vij, Advocate, learned counsel for the

respondents has submitted that in fact in the earlier suit necessary permission to file the suit in a representative capacity had been duly granted and this has been specifically held by the learned Trial Court in terms of its judgment dated 22.07.1998. Besides, it is contended that due Munadi was effected in the village and in any case Khushi Ram who was defendant No.1 in the said suit, is none else than the brother of the present plaintiffs-appellants. Therefore, it is contended that the suit has been filed by the plaintiffs in collusion with Khushi Ram (defendant No.4). It is also contended that in a suit filed in a representative capacity personal notice is not required to be served on all the inhabitants and that proclamation or Munadi in the area is sufficient compliance of law.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties. The earlier suit that was filed by Ghisha Ram, Lambardar and others was decreed on 31.03.1980. Issue No.1 in the said suit was to the following effect:-

“Whether the site ABCD is used by the villagers for the last over 50 years for holding satsang and for other ancillary purposes as alleged? OPP”

The said issue was decided in favour of the plaintiffs Ghisha Ram and others. The objection of the learned counsel appearing for the plaintiffs-appellants to the effect that they were not a party to the said suit and neither was the said suit properly filed in terms of Order 1 Rule 8 CPC or that they were not properly served in terms of Order 1 Rule 8(2) CPC is not of much significance. In this respect, it is appropriate to notice that the learned Trial Court in its judgment dated 22.07.1998 has considered the effect of the

judgment and decree dated 31.03.1980 (Ex. D-2). It was held that Khushi Ram (defendant No.4 in the present suit) is none else than the brother of the plaintiffs-appellants. Besides, it was held that the suit filed by Ghisha Ram and others was filed in a representative capacity and sanction was also given by the Court. It was observed by the trial Court that in the earlier suit it was held by the Court that the plaintiffs therein had made an application under Order 1 Rule 8 and Section 91 CPC seeking permission to sue in a representative capacity. The said application of the plaintiffs therein was allowed and there is no order that permission under Section 91 CPC had been declined. It was also observed by the trial Court that as the proclamation had been properly done in the earlier suit, the plaintiffs-appellants being the real brothers of Khushi Ram (defendant No.4) were well aware about the pendency of the said suit. Therefore, they cannot take the plea that the decree dated 31.3.1980 (Ex.D.2) was not binding on their rights. It was also observed by the trial Court that counsel for Khushi Ram (defendant No.4) had in the earlier suit also raised an objection regarding its maintainability. The said contention was taken into consideration in the earlier suit and it was held that the suit had been properly filed and Khushi Ram (defendant No.4) and other inhabitants of the village were bound by the decree. Therefore, it does not lie in the mouth of the present plaintiffs-appellants to say that the aforesaid decree dated 31.3.1980 (Ex.D.2) was passed behind their back. The said suit being in a representative capacity, the decree passed therein has the same binding effect on the plaintiffs-appellants as it has on Khushi Ram (defendant No.4). Therefore, it was held by the learned trial Court that there was nothing on the file to show that

the decree dated 31.3.1980 (Ex.D.2) passed in the earlier suit is null and void and not effective on the rights of the plaintiffs.

The learned Lower Appellate Court in the case in hand has given detailed reasons in its impugned judgment and decree to the effect that the decree dated 31.03.1980 (Ex. D-2) passed in the earlier suit read with the order of this Court dated 28.05.1985 (Ex. D-1) passed in RSA No.434 of 1985 leads to an irresistible conclusion that the earlier suit stands decreed in a representative capacity under Order 1 Rule 8 read with Section 91 of the Code of Civil Procedure in favour of all the residents of village Rampura and as such in their absence even challenge to such a decree cannot be adjudicated upon lawfully. Therefore, for this reason alone, the suit of the plaintiffs-appellants was held to be not maintainable. Besides, the said judgment and decree dated 31.03.1980 (Ex.D.2) was held to be binding on the plaintiffs-appellants also. Moreover, it was observed by the learned lower appellate Court that the plaintiffs-appellants are the brothers of Khushi Ram (defendant No.4) who was defendant No.1 in the earlier suit filed by Ghisha Ram and others. It was also held that the judgment and decree dated 31.03.1980 (Ex.D.2) which was the subject matter of challenge in the present suit had not been led in evidence nor any evidence whatsoever in support of any illegality or irregularity had been led. The only evidence is that by way of the statement of the plaintiff-appellant Muni Ram (PW-4) who in his examination-in-chief had made a general self-serving statement that Khushi Ram (defendant No.4) had no concern with the property in dispute and that notice of the previous suit was not served upon him. Apart from the said evidence it was observed by the learned

lower appellate Court that the plaintiffs-appellants had failed to establish any illegality or irregularity to assail the judgment in the earlier suit. In the circumstances, looking from any angle, it was observed that the judgment of the trial Court was liable to be affirmed by holding that the judgment and decree passed in the earlier suit was binding on the plaintiffs-appellants.

In the face of the said findings and conclusions reached at by the Courts below, it is evident that suit under Order 1 Rule 8 read with Section 91 CPC had been filed by Ghisha Ram and others in a representative capacity for which sanction was duly given. The fact that the defendant No.4 is none else than the brother of the plaintiffs has been held by the trial Court to be sufficient notice to the plaintiffs as well. Therefore, it is a question of fact that the plaintiffs-appellants were aware of the pendency of the earlier suit i.e. Suit No.86 of 1978, which was decreed on 31.03.1980 (Ex. D-2). In the circumstances, the question that the respondents of the village had not been actually served is not of much consequence insofar as the case in hand is concerned. In Amarjit Singh and others v. Darshan Singh Mahoon and others, AIR 1979 P & H 208 it was held that sub-clause (2) to Rule 8 of Order 1 CPC does not require that a list of the persons sought to be represented has to be filed or that a notice has to be served personally on each person. It was further held that when a suit is sought to be filed on behalf of a class or sect of certain faith, it is impossible to file such list and the notice envisaged in sub-clause (2) has to be served by citation or proclamation. In the circumstances, the position is that where the suit has been filed in a representative capacity against the inhabitants of the village it is not required in terms of Order 1 Rule 8 (2) CPC to file a list

of inhabitants of the village and to serve them personally. Service by citation and proclamation is sufficient. In fact sub-clause (2) to Rule 8 of Order 1 itself envisages that the Court shall, in every case where a permission or direction is given under sub-rule (1) of Rule 8 of Order 1, at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. In the case in hand, the stand of the plaintiffs-appellants that the judgment and decree dated 31.3.1980 (Ex.D.2) was not binding on them as they were not party is, therefore, wholly misconceived and without basis. As has already been noticed the plaintiffs-appellants are the brothers of Khushi Ram (defendant No.4) who was a defendant in the earlier suit filed by Lambardar Ghisha Ram. Learned counsel for the appellants has placed reliance on a Division Bench judgment of this Court in Jai Narain vs. Chandgi Ram, 1977 PLJ 527. The scope of the provisions of Order 1 Rule 8 CPC and the conditions for its applicability were considered therein. However, the said judgment in any case is not of much relevance for the purpose of present case as it has been held as a matter of fact that the plaintiffs were aware of the pendency of the earlier suit as their brother defendant No.4 Khushi Ram was defendant No.1 in the said suit. Even otherwise this Court in Amarjit Singh & Ors. vs. Darshan Singh Mahoon and Ors. (supra), as already noticed, has held that in a suit on behalf of large section of certain faith notice by citation or proclamation is sufficient and Sub rule (2) to Rule 8 of Order 1 does not require that the notice should be personally served on each person.

In the circumstances, the fact that the plaintiffs-appellants were not arrayed as parties in Civil Suit No.86 of 1978 which was decreed on 31.03.1980 (Ex. D-2) or that they were not personally served or remained unserved is of no consequence and even otherwise are findings of facts reached at by the Courts below on appreciation of the evidence of record. It is also appropriate to note that in the earlier suit, issue No.1 was regarding; whether the site in question was being used by the villagers for the last 50 years. The said issue was decided in favour of the plaintiffs Ghisha Ram and others in the said case. The said findings were reached at after consideration of the matter and have been upheld by this Court vide order dated 28.05.1985 (Ex. D-1) passed in RSA No.434 of 1985. The order passed in the earlier case relates to a matter of public nature relevant to the inquiry in the present suit. Therefore, the said findings having been reached at in the earlier suit and the Courts below having upheld the same by holding that the plaintiffs-appellants are bound by the decree passed in the earlier suit, there is no scope for interference by this Court in Regular Second Appeal specially when the findings and conclusions reached at are based on facts and no question of law is shown to have arisen which requires determination by this Court in second appeal.

For the foregoing reasons, there is no merit in this appeal and the same is accordingly is dismissed.

April 17, 2006
nt/hsp

(S.S. SARON)
JUDGE