

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-17 of 1990 (O&M)

Date of decision: 28.04.2020

Santosh Kumari & Ors.

... Appellants

versus

Jind Improvement Trust & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. Raj Kumar Gupta, Advocate,  
for the appellants.

Mr. Umesh Aggarwal, Advocate  
for the respondents.

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ARUN MONGA, J.

1. The second appeal before this Court arises out of reversal of judgment of the trial Court by the First Appellate Court, whereby the suit of the plaintiff seeking mandatory injunction against defendant Jind Improvement Trust(for brevity, the Trust) for allotment of ½ of the suit property was held to be not maintainable. While dismissing the suit essentially the finding on issue No.6 was reversed, while findings on all other issues, as recorded by the trial Court were not interfered by the First Appellate Court. In the premise, the controversy herein is narrowed down to the issue of maintainability of suit as other issues are not required to be dealt with.

2. Briefly stated, facts herein are that Pritam Singh predecessor-in-interest of plaintiff/ appellants and Smt. Angoori Devi purchased plot No.47 to 50 situated in Vinod Nagar, Jind vide registered sale deed dated 26.04.1967. Later on, these plots in question were acquired by defendant NO.1-Trust vide award dated 03.05.1972(Ex.D-9). As per policy decision of defendant No.1-Trust, resolution No. 140 dated 7.2.1973 was passed by defendant No.1 to allot Plot No.31 in Scheme No.6 in lieu of Plot No. 47 to 50 of Vinod Nagar acquired by the Trust. However, plot No.31 in Scheme No.6 was not available for allotment. Husband of defendant No.2 was employee of Deputy Commissioner office, Jind. Pritam Singh, predecessor-in-interest of the plaintiffs and proforma defendant died on 21.11.1973. Taking undue advantage of the situation, defendant No.2 got plot No.41 allotted in Scheme No.19 from Improvement Trust vide letter dated 15.4.1983(Ex.D-2). Consequently, an allotment letter dated 19.08.1983 (Ex.D-1) was issued and agreement dated 5.9.1983(Ex.D-3) was executed in favour of defendant No.2 only. The plaintiff/ appellants on coming to know about the allotment of plot No.41 on reserve price only in the name of defendant No.2, immediately served notice dated 05.10.1983(Ex.P-2) on Trust for allotment of half share of plot in favour of plaintiff/ appellants. Subsequently, the plaintiff/ appellants also served a reminder dated 09.11.1983(Ex.P-3). Ultimately, a suit was filed for mandatory injunction directing the defendant/ respondent No.1 for allotment of half share of plot NO.41 in Scheme No.19 in favour of plaintiff and proforma defendant. Consequential relief of permanent injunction restraining the defendant No.1-Trust from delivering the possession of entire plot and from issuing sale certificate and executing the sale deed exclusively in favour of

defendant/ respondent No.2 was also sought.

3. Defendant No.2 contested the suit of the plaintiff/ appellants. She claimed herself to be exclusive owner in possession of plot No.47 to 50 Vinod Nagar, Jind. She alleged that Pritam Singh(predecessor-in-interest of plaintiff/ appellants and proforma defendant) was a *benamidar*. It was further pleaded that since Pritam Singh was only *benamidar* to the extent of half share, plot was rightly allotted by Trust in favour of defendant No.2 on reserve price. Action of defendant No.1 Trust was thus legal and justified. Defendant No.2 also raised preliminary objections that suit of the plaintiff discloses no cause of action, it is bad for non-joinder of necessary parties and want of notice under Section 98 of the Town Improvement Trust, Jind. A preliminary objection regarding maintainability of the suit was also taken.

4. Defendant No.1 also contested suit of the plaintiff on similar grounds.

5. Based on the rival pleadings, various issues were framed as noted in the judgments passed by the Courts below. After perusal of the oral as well as documentary evidence adduced by the parties, the trial Court returned the findings in favour of the plaintiff and decreed the suit by issuing mandatory injunction as prayed for.

6. On an appeal filed by contesting defendant No.2, as already noticed above, the First Appellate Court, reversed the finding of trial Court on issue No.6 and held that the suit was not maintainable. Consequently, the suit was dismissed, leading to the filing of instant regular second appeal.

7. I have heard learned counsel for the parties and have gone through the paper-book with their able assistance.

8. The material issue that requires re-adjudication in the second appeal before this Court is issue No.6, which reads as under:-

*“6. Whether the suit of the plaintiffs is not maintainable in the present form?OPD”*

9. The trial Court while deciding issue No.6 considered the contentions of defendant No.2 that since defendant No.2 had already taken the possession of the disputed plots and the plaintiffs have not filed the suit for possession against defendant No.2, the suit of the plaintiffs is not maintainable. The trial Court while dealing with the contentions raised by defendant No.2 found as a fact that plaintiff/ appellants had filed a suit on 18.01.1984 for mandatory injunction for issuing mandate to defendant No.1 for allotment of half share of plot No.41 in their favour and also for permanent injunction restraining defendant No.1 from delivering the possession of entire plot and from issuing sale certificate and executing sale deed etc. only in favour of defendant No.2.

10. As per admitted facts on record the possession of plot in question was handed over to defendant No.2 by Trust on 20.09.1984 vide possession certificate Ex.D-4 i.e. during the pendency of the suit and the trial Court by relying upon the judgment titled as **Raminder Singh Vs. Sham Lal, AIR 1984 (P&H) 145**, held that suit of the plaintiff is well maintainable and further observed that since the possession was handed over by defendant No.1 to defendant No.2 during pendency of the suit, plaintiff is entitled to half share of the possession of the plot in question, even though the plaintiffs have not got the plaint amended.

11. For ready reference the relevant part of the trial Court judgment is extracted hereinbelow:-

*“15. The learned counsel for the defendant No.2 has*

*argued that suit of the plaintiff for mandatory injunction and permanent injunction is not maintainable because the defendant No.2 has already taken possession of the disputed plot. He has argued that the plaintiffs should have filed a suit for possession against defendant No.2.*

16. *I have carefully considered the above arguments of the learned counsel for the defendant No.2. A perusal of the file shows that the plaintiffs filed a suit for mandatory injunction for issuing a mandate to defendant No.1 for allotment of ½ share of plot No.41 in their favour and for permanent injunction restraining the defendant No.1 from delivering the possession of the entire plot and from issuing a sale certificate etc. on 18.1.1984. The possession certificate Ex.D4 shows that the possession of the plot No.41 in Scheme No.19 was taken by Smt. Anguri Devi from the Improvement Trust Jind on 20.9.1984 i.e. during the pendency of the suit. It has been held in AIR 1959 Bombay 491 that the court can take cognizance of events subsequent to the filing of suit and mould its decree according to the circumstances existing at that time. Furthermore, it has also been held in Raminder Singh Vs. Sham Lal AIR 1984 Punjab and Haryana 145 that if the plaint does not contain specific prayer for a relief, the court can grant such a relief to the plaintiff if he is entitled on facts proved. In the present case, after taking into consideration the subsequent events after the filing of the suit, I feel that the relief of possession of ½ share of disputed plot can also be granted to the plaintiffs even though such a relief has not been claimed by the plaintiffs and the plaint has not been amended by the plaintiffs. This issue is accordingly decided against the defendants.”*

12. First Appellate Court reversed the said finding merely on technical ground with the observations that since defendant No.2 is in possession of the suit land and the plaintiff did not seek the relief of possession, the suit of the plaintiff is not legally maintainable.

13. First Appellate Court also recorded the findings that since the plaintiff did not get his plaint amended seeking the relief of possession the suit of the plaintiff is not maintainable. The First Appellate Court while recording finding on issue No.6 also relied upon the case law reported as **Smt. Shankari Vs. Smt. Karan Kaur, 1982 Current Law Journal 25.**

14. The learned First Appellate Court while reversing the findings, observed as under:-

*“15. The only issue that remains to be considered is issue No.6 regarding maintainability of the suit in the present form, there is force in the argument advanced on behalf of defendant-appellant that suit is not maintainable. Reliance has been placed on Smt. Shankari Vs. Smt. Karam Kaur and another 1988(1) CLJ (C.Cr. And Rev.25. The facts of that case are almost similar to the facts of the present suit. Therein one S and K were co-owners in the acquired land and both of them made a joint application to the Improvement Trust for exemption of their land from acquisition. Some land was exempted and that fact was conveyed to K. The entire compensation was paid to K and one plot reserve price was also allotted to her. When K applied for sanction for raising constructions on that plot requested the Improvement Trust to withdraw the sanction. The sanction for construction was withdrawn. K instituted a suit against S and Improvement Trust restraining it from withdrawing the sanction for construction. In the reported judgment it has come in fact that intimation of exemption was offered to K for allotment of a plot at reserve price and that offer was accepted by K and a plot was allotted to her. It was held by our Hon'ble High Court that the fact that no plot was offered to S and that no plot was offered to S and that no orders had been passed on her application, or K or her husband had not informed her of the offer of plot at reserve price, had no bearing on the rights of S in the plot allotted to K and in case S was dis-satisfied with the*

*acceptance or any action of the Trust on her application, she had to seek her remedies of law. It was clear in that case also that from the record it appeared that S did not raise even her little finger till long time after against allotment of plot. The Trust had acted fairly or in accordance with law. It was held that these facts did not entitle the Improvement Trust to revoke the completed contract with K regarding allotment of a plot at reserve price. I have already pointed out that the facts of the present case are almost similar to the facts of the above quoted ruling. So, a suit for mandatory injunction is not at all maintainable against defendant No.1 i.e. Improvement Trust. No relief for possession was claimed in the plaint against Smt. Anguri Devi and even when possession of the plot was delivered to her during pendency of the suit, the plaintiffs did not amend their plaint to seek relief of possession for which they were required to pay advalorem court fee. Therefore, under these circumstances the trial court could not take notice of subsequent event i.e. delivery of possession of the plot by Improvement Trust to Smt. Anguri and it could not decree the suit of the plaintiffs for possession of ½ share of the plot allotted to Smt. Anguri.”*

15. I have heard the rival contentions of learned counsel for the parties and I am of the view that the findings returned by First Appellate Court on maintainability of suit are not sustainable for the reasons stated hereinafter.

16. As per settled law, maintainability of a suit is to be seen on the date of filing of the suit. A Court in the interest of justice can mould the relief by taking note of any subsequent development taking place during pendency of the suit. Admittedly, the plaintiffs/ appellants filed the suit for mandatory injunction for issuing mandate to defendant No.1 for allotment of half share of plot No.41 situated in Scheme No.19 in favour of plaintiff

and proforma defendant No.3. Relief of permanent injunction as a consequential relief was also sought restraining defendant No.1 from delivering the possession of the entire plot and issuing sale certificate and executing sale deed in respect of plot in question in favour of defendant No.2 only. The plaintiff/ appellants along with the suit also filed an application for stay under Order 39 Rules 1 and 2 for ad interim injunction. To be noted that, Trial Court while deciding stay application protected the rights of plaintiff/ appellants, with specific observations, that ultimately, if the plaintiffs are found entitled to half share in plot No.41 Scheme No.19, they can get their share from defendant No.2 and they are not going to suffer any irreparable loss in case ad interim injunction is refused. A Court while deciding ad interim injunction application is simply to see the *prima facie* case, balance of convenience and irreparable loss caused to the plaintiffs. Since no evidence was adduced by either of the parties, it was difficult for the trial Court to record any definite findings. However, the trial Court while deciding application for ad interim injunction protected rights of plaintiff/ appellants with the following observations:-

*“On the other hand, even if ultimately it is held that plaintiffs are entitled to ½ share in the plot No.41 of Scheme No.9, they can get their share from the defendant No.2 later on and they are not going to suffer any irreparable loss in case ad interim injunction is refused.”*

17. Admitted case of both the parties is that the possession of the plot was delivered on 20.9.1984 to defendant No.2 after decision of the application for ad interim injunction vide order dated 7.9.1984 vide which the rights of the plaintiff/ appellants had been fully protected subject to the decision of the suit on merits. Since the possession was handed over to



defendant No.2 during pendency of the suit and the rights of the plaintiff/appellants over the suit land had been protected by the trial Court while deciding the application for ad interim injunction, trial Court was legally justified in deciding issue No.6 regarding maintainability of the suit in favour of the plaintiff.

18. First Appellate Court exceeded its jurisdiction in reversing the said finding qua maintainability, which is totally illegal, perverse, based on surmises and conjectures and is not legally sustainable and is thus liable to be set aside.

19. The facts of the case titled as Smt. Shankari(supra) relied by First Appellate Court are distinguishable from the facts of the case in hand. Admittedly, the plaintiff/ appellants on coming to know about the fraudulent action of defendant No.1 in allotting plot No.41 only in favour of defendant No.2 at the instance of her husband working in the office of Deputy Commissioner, Jind applied for allotment of plot to the extent of half share and issued reminder also and immediately thereafter filed a suit claiming relief which was available to them on the date of filing of the suit. There was neither any legal impediment on the rights of the plaintiff/appellants in filing the suit for mandatory injunction and permanent injunction on the date of its filing, nor, can it be said, that the suit of the plaintiff/ appellants was not legally maintainable.

20. The observations of First Appellate Court for reversing the findings on issue No.6 are based on surmises and conjectures and are not legally tenable being contrary to the settled law that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Reliance may be had on **Rameshwar Vs. Jot Ram 1976(1) SCC 194**, wherein the Apex Court observed as under:-

*“In P. Venkateswarlu V. Motor & General Traders, AIR 1975 Supreme Court 1409 this Court dealt with the adjectival activism relating to post-institution circumstances Two propositions were laid down. Firstly, it was held that 'it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings'. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action. This position finds support in Bhajan Lal V. State of Punjab, 1970 PLJ 812 SC.”*

21. It has been argued by learned counsel for the respondent that perusal of plaint itself shows that plaintiff/appellants were well aware of the fact that the plot had already been allotted in favour of defendant No.2 as on 15.04.1983 and yet the civil suit which was filed much later i.e. on 18.01.1984 merely sought mandatory injunction without challenging the prior allotment by way of declaration. It is contended that suit was, therefore, not sustainable. I am unable to accept this contention. Merely

because the plaintiffs were aware that respondent/ defendant No.2 had been issued the said letter dated 15.04.1983, would not render the suit as not maintainable, more so when possession was still with the Trust and prayer in the plaint is not only for mandatory injunction but also for permanent injunction restraining the Trust from delivering the possession of the suit land with a further restraint from issuing the sale certificate and for executing the sale deed pursuant thereto in respect of suit property. In the premise, trial Court rightly held that relief of possession of ½ share of suit land can also be granted to the plaintiffs even if such a formal relief had not been claimed by the plaintiffs either at the first instance when the suit was filed or subsequently by way of amendment.

22. I am also unable to accept the argument of learned counsel for Trust that the First Appellate Court rightly reversed the findings on issue No.6 in as much as trial Court had exceeded its jurisdiction in view of proviso to Section 34 read with Section 41(h) of the Specific Relief Act. To test the argument of learned counsel for Trust, the said provisions, for ready reference, are reproduced hereinbelow:-

***“34. Discretion of court as to declaration of status or right.—***

*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”*

***41. Injunction when refused.—An injunction cannot be granted—***

(a) to (g) XXX

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust”

23. A bare perusal of the above provisions would reflect that argument raised by learned counsel for Trust are not supported by the mandate contained in the provisions, as relied by him. The reliance thereupon by learned counsel for respondent is totally misplaced. No such mandatory requirement is contained either in Section 34 or Section 41, *ibid*. The said argument has simply been noticed, only to be rejected.

24. In the aforesaid premise, this second appeal is accepted. Both the judgment and decree passed by the First Appellate Court are set aside and the finding of the trial Court on issue No.6 and judgment and decree passed by trial Court are restored.

25. Pending applications, if any, stand disposed of.

26. No order as to costs.

(ARUN MONGA)  
JUDGE

April 28, 2020  
Jiten

Whether speaking/reasoned :  
Whether reportable :

Yes/No  
Yes/No