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GIAN KAUR

v.

RAGHUBIR SINGH

(Civil Appeal No. 1142 of 2003)

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FEBRUARY 03, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

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Specific Relief Act, 1963 – s. 34 – Suit for declaration – Decreed by trial court and first appellate court – However, set aside by High Court on a finding that suit simpliciter for declaration is not maintainable u/s. 34 and the plaintiff should have filed a suit for possession – Held: Finding of the High Court that suit simpliciter for declaration is not maintainable u/s. 34, is not sustainable – In the suit, apart from a prayer for declaration there was a consequential prayer for a decree for permanent injunction as also an alternative prayer for decree for possession – Also, the issue relating to the maintainability of the suit in the present form was raised before the trial court and was not proved by the defendant and as such was decided against the defendant – Said issue was not raised before the first appellate court – The suit is not hit by s. 34 – Order of the High Court set aside and that of the first appellate court, restored.

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The trial court and the first appellate court decreed the suit for declaration filed by the appellant in respect of the land in question. In the Second Appeal, the High Court held that the suit simpliciter for declaration is not maintainable under Section 34 of the Specific Relief Act, 1963 and the appellant should have filed a suit for possession. Therefore, the appellant filed the instant appeal.

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Allowing the appeal, the Court

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HELD: 1.1 From the plaint, it appears, prima facie, that apart from making a prayer for declaration there is also a consequential prayer for a decree for permanent injunction restraining the defendant from alienating the suit property or interfering in peaceful possession of the plaintiff. There is an alternative prayer for decree for possession also. From the prayers made in the plaint, it is clear that the consequential relief of permanent injunction was prayed, and before the trial court, the issue relating to the maintainability of the suit in the present form was raised but the same was not pressed by the defendant nor was any such question raised before the first appellate court. In that view of the matter, the finding of the High Court that the suit is merely for declaration and is not maintainable under Section 34 of the Specific Relief Act, cannot be sustained. Thus, the suit is not hit by Section 34 of the Specific Relief Act, 1963. [Paras 8, 9, 10, 11 and 13] [491-B-E-G]

1.2 The High Court set aside the concurrent finding of the courts below on an erroneous appreciation of the admitted facts of the case and also the legal question relating to Section 34 of the Specific Relief Act, 1963. Therefore, the order of the High Court is set aside and that of the first appellate court is restored. [Paras 14 and 15] [491-H; 492-A-B]

Ram Saran and Anr. vs. Ganga Devi AIR 1972 SC 2685 – distinguished.

Case Law Reference:

AIR 1972 SC 2685 Distinguished Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1142 of 2003.

From the Judgment & Order dated 26.08.2002 of the High

A Court of Punjab and Haryana at Chandigarh in R.S.A. No. 1806 of 2000.

Devender Mohan Verma for the Appellant

The Judgment of the Court was delivered by

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GANGULY, J. 1. This appeal is directed against the judgment and order dated 26.08.2002 of the Punjab and Haryana High Court in Regular Second Appeal No.1806 of 2000. By the judgment under appeal, the Hon'ble High Court reversed the judgment and decree of the Court below and held that the suit for declaration that the plaintiff is the owner in possession of land measuring 16 kanals situated in village Ajnoha, is not maintainable. The plaintiff is in appeal before this Court. The material facts of the case are as under.

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2. Labhu, an agriculturist of village Sarhola Mundia, Tehsil & District Jalandhar, Punjab had three sons, namely, Khushi Ram, Raghubir Singh and Kashmir Singh and a daughter called Pritam Kaur. The shares of the sons were partitioned by the Revenue Authorities as early as on 30.4.1990 and share of Khushi Ram was separated from Raghubir Singh each getting 16 kanals. Khushi Ram executed a Will in favour of Gian Kaur and appointed her as his Mukhtiar-e-am. Subsequently, relations between them became strained and he cancelled his Will and his Power of Attorney. The appellant is daughter of Pritam Kaur and Khushi Ram was living with Pritam Kaur in her house and Pritam Kaur was serving him. Both Gian Kaur and Khushi Ram opened a joint account in a Bank and out of love and affection Khushi Ram subsequently executed a Will dated 12.4.1990 in favour of the appellant-plaintiff. Under these circumstances, the appellant claimed that she is in actual physical possession of the suit land. Even after a compromise was arrived at between the parties on 2.10.1991, the defendant brought a suit for declaration challenging the Will. That suit was withdrawn on 1.12.1993 without any permission of the Court to

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file a fresh a suit. After the withdrawal of the aforesaid suit, the filing of the present suit for declaration and permanent injunction became necessary as the defendant threatened to dispossess the plaintiff from the suit property.

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3. Before the trial Court, the stand of the defendant was that the property is a Joint Hindu Family property and the plaintiff has no cause of action to file the suit. It was also the contention of the defendant that Khushi Ram was a saintly person and wanted to donate land to a religious institution. The relationship between Khushi Ram and the plaintiff was admitted but the fact of opening a joint bank account with the plaintiff was denied. The trial Court framed about eight issues in the matter. Those issues are as follows:

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- “1. Whether Khushi Ram has executed any will dated 12.4.1990? OPP
2. Whether the Plaintiff is owner in possession of the Suit land? OPP
3. Whether the Plaintiff is entitled to the declaration as prayed for? OPP
4. Whether the Suit is not maintainable in the present form? OPD
5. Whether the jurisdiction of the Civil Court is barred? OPD
6. Whether the Suit property is joint Hindu undivided property? If so, its effect? OPD
7. Whether the Suit is not properly valued? OPD
8. Relief.”

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4. As would appear from the issues set out above that issue relating to maintainability of the suit was framed and on

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A that issue finding of the trial Court is that the issue was not proved by the defendant and that issue remained unproved and as such was decided against the defendant.

B 5. From the judgment of the First Appellate Court also it appears that the issue of maintainability was not raised and the First Appellate Court affirmed the findings of the trial Court and dismissed the appeal, inter alia, holding the application filed by the defendant for leading additional evidence is also without any merit.

C 6. Hon'ble High Court while entertaining the Second Appeal against such concurrent finding, came, inter alia, to a finding that the suit simpliciter for declaration is not maintainable under Section 34 of the Special Relief Act and the plaintiff should have filed a suit for possession. By referring D to a judgment of this Court in the case of *Ram Saran and another vs. Ganga Devi* – AIR 1972 SC 2685, the High Court dismissed the suit and allowed the appeal.

E 7. The plaint which as been produced before this Court by way of additional documents contained the following prayer:

F “(a) A decree of declaration to the effect that the plaintiff is owner in possession of 16 Kanal 0 Marla of land fully detailed and described in headnote of plaint and situated in village Ajnoha H.B. No.52, P.S. Mahilpur, District Hoshiarpur as entered in latest jamabandi, in view of Will dated 12.4.90 executed by Khushi Ram s/o Ram Ditta in her favour;

G (b) With consequential relief decree for permanent injunction restraining the Deft not to alienate the suit property or interfering in peaceful possession of plaintiff therein; and

H (c) In the alternative decree for possession if the

plaintiff is dispossessed by Deft during pendency of suit;

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may kindly be passed in favour of the plaintiff and against the Deft with costs."

8. It appears, prima facie, that apart from making a prayer for declaration there is also a consequential prayer for a decree for permanent injunction restraining the defendant from alienating the suit property or interfering in peaceful possession of plaintiff therein.

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9. There is an alternative prayer for decree for possession also.

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10. From the prayers made in the plaint, it is clear that the consequential relief of permanent injunction was prayed and before the Trial Court the fourth issue relating to the maintainability of the suit in the present form was raised but the same was not pressed by the defendant nor was any such question raised before the First Appellate Court.

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11. In that view of the matter, the finding of the High Court that the suit is merely for declaration and is not maintainable under Section 34 of the Specific Relief Act cannot be sustained. The High Court's reliance on a decision of this Court in *Ram Saran* (supra) is also not proper.

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12. From the decision in *Ram Saran* (supra), it is clear that in that suit the plaintiff merely claimed a declaration that they are the owners of the property and they have not sought for possession of the said properties.(see para 4)

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13. For the reasons aforesaid, this Court holds that the suit is not hit by Section 34 of the Specific Relief Act. The decision in *Ram Saran* (supra) was rendered on totally different facts and cannot be applied to the present case.

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14. We are, therefore, constrained to observe that the High

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A Court reversed the concurrent finding of the Courts below on an erroneous appreciation of the admitted facts of the case and also the legal question relating to Section 34 of the Specific Relief Act.

B 15. We, therefore, allow the appeal set aside the order of the High Court and restore that of the First Appellate Court. There shall be no order as to costs.

N.J.

Appeal allowed.