



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.524 of 1990 (O&M)
in/and XOBJC-6-C-1993
Date of Order:27.01.2025

Duggal Baradri (Phagwara) Through Sh. Keshav Dev Duggal
..Appellant

Versus

Santosh Kumari (since deceased) through LRs and others
..Respondents

RSA No.525 of 1990(O&M)

Duggal Bradari Sabha Hadiabad (Phagwara)
..Appellant

Versus

Ashok Kumar and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Veer Imaan Singh Gill, Advocate
for the appellant (in RSA-524 of 1990)**

**Mr. Amit Jain, Sr. Advocate, with
Mr. Parit Aggarwal, Advocate
for respondent no.1(in RSA-524-1990)**

**Mr. M.L.Sarin, Sr. Advocate, with
Mr. Ritesh Aggarwal, Advocate
for respondents no.3 to 7 (in RSA-525-1990)**

ANIL KSHETARPAL, JUDGE (Oral)

1. With the consent of the learned counsel representing the parties, two Regular Second Appeals and cross objections filed against the common judgment passed by the First Appellate Court shall stand disposed of by this order.

2. Two Regular Second Appeals have been filed by the



plaintiff(s), whereas the cross-objections have been filed by one of the defendant. After having heard the learned counsel representing the parties, this court is of the considered view that the matter is required to be remitted back to the First Appellate Court for a fresh decision. Hence, detailed facts and evidence led by the parties are not required to be discussed.

3. In substance, the plaintiff claims to be a registered society of Duggal Biradri (Duggal is a surname of Khatri caste). It was claimed by the plaintiff that the sale deed executed by defendants no.1 and 2, namely, Sh. Ashok Kumar and Sh. Madan Lal Duggal, in favour of defendants no.4 to 7, is illegal as the property belongs to the plaintiff and defendants no.1 and 2 have no right to execute the sale deed. It was also claimed that the plaintiff is an association of members of Duggal Biradri which subsequently got registered as a Society.

4. Per contra, the defendants contested the suit on the ground that the plaintiff is not the owner of the property and in fact, it was 'Shamlat Deh Hasab Rasad Khewat' in occupation of 'Mushtarka Aqwan Khatri Duggalan'. In other words, it is a collective property of proprietary body constituting members of Duggal caste. It was also claimed that the plaintiff was never owner in possession of the land except land comprised in Khasra No.790(0-16) and defendant no.4 is in cultivating possession for the last 6 years.

5. In fact, two suits were filed, one for declaration and second for grant of decree of permanent injunction.

6. From the pleadings of the parties, the following issues were culled out:-

“1) Whether there exists Duggal Baradari Sabha and the same has been duly registered under the India Societies



Act? If so its effect?OPP

- 2) *If issue no.1 is proved, whether Duggal Baradari Sabha Hadiabad has locus standi to file this suit?OPP*
- 3) *Whether persons mentioned in para No.1 of the plaint, are the office bearers and members of the suit Sabha after its registration?OPP*
- 4) *Whether Jagan Nath deceased was the President of the said Sabha?*
- 5) *Whether Keshav Dev is the President of the Sabha?OPP*
- 6) *Whether Jagan Nath deceased, Balbhadar Sain and Kishori Lal were authorised to institute the suit, sign and verify the present plaint?OPP*
- 7) *Whether Keshav Dev has been authorised to continue the present suit?OPP*
- 8) *What is the effect of non-compliance of provision of Order 1 Rule 8 of the CPC?OPD*
- 9) *Whether the plaintiff is the owner of the suit land along with other land mentioned in para no..4 of the plaint?OPP*
- 10) *Whether the defendant no.3 has been and is the tenant of the plaint?OPP*
- 11) *Whether the sale deed in dispute is invalid and ineffective as alleged?OPP*
- 12) *Whether defendant no.1 and 2 were/are co-owners in possession of the suit land and other land mentioned in para 4 of the plaint and as such the sale deed in dispute by tehm in favour of the defendants no.4 to 7, is valid as alleged in the WS?OPD*
- 13) *Whether the plaintiffs are entitled to relief of injunction and declaration prayed for?OPP*
- 14) *Relief.”*

7. Similarly, in the injunction suit, separate issues were culled



out:-

- “1) *Whether the plaintiff has locus standi to file the present suit?OPP*
- 2) *Whether the Duggar Baradari Sabha exists and is registered as alleged in the plaint?OPP*
- 3) *Whether the persons mentioned in para no.1 of the plaint are the office bearers and members of the plaintiff-Sabha? If so its effect?OPP*
- 4) *Whether Keshav Dev, Parshotam Lal and Balbahadar Sain are authorised to institute this suit and sign and verify the plaint?OPP*
- 5) *Whether the provisions of Order 1 Rule 8 of the CPC have been complied with?OPP*
- 6). *If issue no.5 is proved against the plaintiff, what is its effect?OPD*
- 7) *Whether the suit is maintainable in the present form?OPD*
- 8) *Whether the plaintiff is exclusive owner in possession of the suit land?OPP*
- 9) *Whether khasra no.790 is exclusively owner and possessed by defendant no.1, as alleged in the written statement?OPD-1*
- 10) *Whether the suit is within time?OPP*
- 11) *Whether all the members of Duggal Bradari of Hadiabad, who were the landowne4rs and are still so were and are the owners in possession of the suit land excepting khasra no.790?)OPD*
- 13) *Whether the defendant no.4 is the tenant of the plaintiff?OPP*
- 14) *Relief.”*

8. The trial court recorded findings of fact on certain issues in favour of the plaintiff, however, dismissed both the suits. Two first appeals were filed by the plaintiff. The First Appellate Court by a cryptic judgment



dismissed both the appeals. The findings of the First Appellate Court are not only contradictory but the suit filed by the plaintiff has been held to be not maintainable on the ground that the relief of possession has not been sought while seeking relief of declaration.

9. The proviso to Section 34 of the Specific Relief Act, provides that if the plaintiff is entitled to a further relief, but does not seek the same, the suit would not be maintainable. However, this is only a technical objection. The Courts while interpreting Section 34 of the Specific Relief Act, have held that an opportunity should be given to the plaintiff to amend the plaint in order to seek further relief so as to avoid any dismissal on technical ground. The First Appellate Court overlooked the aforesaid position.

10. The learned counsel representing the respondents have stated that the registered Society has not been constituted by members of original proprietary body. On a bare look at the issues culled out by the courts, it is evident that this aspect has not been examined by both the courts below.

11. It may be noticed here that the trial court had decided issues no. 1 to 8 against the plaintiff, whereas the trial court has noted that these were decided in favour of the plaintiff. The learned counsel representing the respondents submits that this may be on account of inadvertent mistake.

12. Furthermore, the property was sold by two individuals, namely, defendants no.1 and 2. The First Appellate Court has found that this property could not be sold by individuals. Still, the suit was dismissed.

13. The learned counsel representing the respondents has submitted that the first appeals were also been dismissed on the ground that a copy of



the decree was not attached in an appeal arising from the suit for injunction. In such circumstances, the First Appellate Court was required to at least discuss the properly constituted appeal filed against the judgment in declaratory suit. In any case, the First Appellate Court could have called upon the appellant to file a copy of the decree sheet rather than dismissing the same on technical ground.

14. Keeping in view the aforesaid facts, the matter is required to be re-examined by the First Appellate Court.

15. The parties through their counsel are directed to appear before the First Appellate Court, on 28.03.2025.

16. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

January 27, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No