

2024:PHHC:134056



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-274-2010 (O&M)
Reserved on : 03.09.2024
Pronounced on : 15.10.2024

TEJ KAUR AND ANOTHER Appellants

VERSUS

GURTEJ SINGH AND OTHERS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Kumar, Advocate for the appellants.

Mr. P.K. Ganga, Advocate for respondents No.1, 5 and 7.

Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate for respondents No.2 to 4.

Respondents No.8 and 9 proceeded against *ex parte*
vide order dated 09.05.2012.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree dated 13.08.2008 passed by the Trial Court and the judgment and decree dated 28.08.2009 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a simplicitor suit for permanent injunction for restraining the defendant-respondents from interfering into the peaceful possession of the plaintiff-appellants over the land comprised in Khewat No.213, Khatauni No.413, Rect No.133 Killa No.7(8-0), 8(0-16), 14 min (4-18), 15 min (4-10) Kittas 4 measuring 18 Kanals 4 Marlas as per the

jambandi for the year 1995-96 situated in the area of Village Phullo, Tehsil Dabwali, District Sirsa as also for restraining the defendant-respondents from ousting the plaintiff-appellants from the suit property. The case set up by the plaintiff-appellants was that the suit property was previously owned and possessed by one Surjit Singh, husband of plaintiff-appellant No.1 and father of plaintiff-appellant No.2, and after his death the plaintiff-appellants along with Harbans Singh, Veer Paul, Beep Paul and Nirmal Kaur are owners in possession of the suit property and that the defendants-respondents had no right, title or concern with the said suit property. It was alleged that the defendant-respondents were strong headed people and they have contacts with political parties and were adamant to oust the plaintiff-appellants.

3. Upon notice the defendant-respondents No.1 and 2 appeared and denied the case of the plaintiff-appellants stating that the plaintiff-appellants are not owners in possession of the suit property as claimed by them and that defendant-respondent No.1 is the owner in possession over the same. Surjit Singh, who was the predecessor-in-interest of the plaintiff-appellants, had executed a Sale Deed No.455 of 28.05.1979 in favour of defendant-respondent No.1 for a sale consideration of Rs.6,000/- and delivered exclusive possession of the land comprised in Rect. No.133 Killa Nos.6, 7 and 8 situated in the Village. This area of the land in dispute was situated towards the Northern side of Haibuana Minor which starts from Village Tigri towards Village Haibuana and out of the area measuring 32 Kanals comprised in Khewat No.213 Khatauni Nos.411 to 413 only this area

of the land falls on the Northern side of the Haibuana Minor and the remaining area of this Khewat falls on the Southern side of Haibuana Minor. There is other land of defendant-respondent No.1 also towards the Northern side of the suit property which was purchased by defendant-respondent No.1. The plaintiff-appellants have no concern with the same. Defendant-respondents No.3 to 5 were not impleaded as parties and were subsequently added on an application filed by them under Order 1 Rule 10 CPC. Defendant-respondents No.3 to 5 in their written statement claimed themselves to be owners in possession of the suit property and that neither the plaintiff-appellants nor defendant-respondent No.1 had any right, title or interest in the same. It was further averred that Surjit Singh was the owner of 8 Kanals 4 Marlas out of which 6 Kanals were sold to defendant-respondents No.3 to 5 vide sale deed dated 14.06.1985 and the remaining land measuring 2 Kanals 4 Marlas had come in Haibuana Minor and hence the plaintiff-appellants were left with no land. Rejoinder was filed to the written statements denying the averments made therein and reiterating those made in the plaint.

4. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are owners in possession of the suit land detailed in the head note of the plaint as alleged ? OPD
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPD

3. Whether the plaintiffs have concealed true and material facts from the Court, thus, they are not entitled to the relief as prayed for ? OPD
4. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
5. Whether the plaintiffs have no cause of action and no *locus standi* to file the present suit ? OPD
6. Whether the plaintiffs are estopped by their own act and conduct from filing the suit ? OPD
7. Relief.

5. The Trial Court held that though the plaintiff-appellants had claimed to be in exclusive possession over the suit property on the basis of the revenue record for the year 1995-96 however, no such jamabandi for the year 1995-96 was placed on the record. The Trial Court holding that the plaintiff-appellants had failed to prove that they were in separate possession over the suit property, dismissed the suit vide judgment and decree dated 13.08.2008. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 28.08.2009. Hence, the present regular second appeal by the plaintiff-appellants.

6. The learned counsel for the plaintiff-appellants would contend that the plaintiff-appellants were shown as owners in possession over the suit property as per the jamabandi for the year 1995-96. It is further the contention that the sale deed alleged to have been executed by Surjit Singh

in favour defendant-respondent No.1 on 28.05.1979 was never placed on the record and hence both the Courts erred in dismissing the suit of the plaintiff-appellants.

7. *Per contra*, learned counsel for the defendant-respondents would contend that the suit was rightly dismissed by both the Courts in view of the fact that the plaintiff-appellants failed to show that they were in separate possession over the suit property. It is further the contention that it has been held by the Trial Court that if the plaintiff-appellants had been left with some portion of the land as co-sharers, their remedy was to seek partition of the joint suit land and hence no fault can be found with the judgments and decrees passed by both the Courts.

8. Heard.

9. In the present case though the suit was filed relying upon the jamabandi for the year 1995-96 and claiming that the plaintiff-appellants were in possession of the suit property, however, the said jamabandi was never brought on the record. Further, Surjit Singh (father of plaintiff-appellant No.2) was the owner of land measuring 8 Kanals and 4 Marlas. As per the admission of plaintiff-appellant No.2, his father was owner of 8 Kanals and 4 Marlas out of which he had sold 6 Kanals to defendant-respondents No.3 to 5 along with possession. It is further admitted by PW-1 in the cross-examination that Haibuana Minor leads in between Killa Nos.6, 7 and 8 and no compensation of land was given to the co-sharers and that land measuring 2 Kanals and 4 Marlas had come in the Minor in this way. Hence, Surjit Singh, who admittedly sold 8 Kanals 4 Marlas sold 6 Kanals to

defendant-respondents No.3 to 5 and if 2 Kanals 4 Marlas came in the Minor, Surjit Singh himself was left with no land. Jamabandi for the year 2000-01 (Ex.P-1) also shows other co-sharers in possession of the suit property.

10. A Division Bench of this Court in the case of **Bachan Singh Vs. Swaran Singh [2000 (3) RCR (Civil) 70]** has held as under :

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

- (i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.*
- (ii) Mere making of construction or improvement of, in the common property does not' amount to ouster.*
- (iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.*
- (iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-*

owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

In the absence of any evidence having been led by the plaintiff-appellants to show that they were in exclusive possession of the suit property, no injunction could have been granted in favour of the plaintiff-appellants. Further still, even if the plaintiff-appellants are in possession of some portion of the property which is held by them along with other co-owners, the remedy would be to file a suit for partition.

11. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : *Whether speaking/non-speaking: Speaking*
 Whether reportable: Yes/No