

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 4522 of 2003
Date of decision : January 06, 2015

Matadin and anotherAppellants

versus

Rameshwar and othersRespondents

Regular Second Appeal No. 3611 of 2008

Omkar and othersAppellants

versus

Rameshwar and othersRespondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Jai Vir Yadav, Advocate and
Mr. Tapan Yadav, Advocate, for the appellants

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate, for the respondents

Fateh Deep Singh, J.

These two appeals though by different sets of appellants have arisen out of same very suit for permanent injunction filed by one Rameshwar against Matadin and having arisen out of same impugned judgment decree dated 1.5.2003 passed by learned Additional District

Judge, Rewari are being taken up together. The suit of plaintiff-appellant Rameshwar stood dismissed vide judgment decree dated 24.10.2000 passed by the court of learned Additional Civil Judge (Senior Division) Rewari and which findings were reversed by first appellate court thus being co-joint matters and to prevent prolixity are being disposed of by this common judgment.

Heard Mr. Jai Vir Yadav, Advocate and Mr. Tapan Yadav, Advocate, for the appellants and Mr. Arun Jain, Senior Advocate with Mr. Abhishek Dhull, Advocate, for the respondents and perused the records.

The facts that deserves to be highlighted, are that the plaintiffs Rameshar, Om Parkash, Ramavtar, Dulichand, Gopal, Jaipal and Smt. Vidhiya Devi filed against defendants Matadin and Gindori brother and sister, a suit for permanent injunction to the effect that the plaintiffs are joint owners and in possession of the suit land upto 14/17 share while defendant no. 1 Matadin was having 3/17 share and defendant no. 1 has no concern with the suit land detailed and described in the head note of the plaint situated in the revenue estate of village Chandanwas.

The undisputed facts that emerge from the pleadings and the evidence oral as well as documentary that the parties as have noticed and concluded by both the courts below are that the parties plaintiffs as well as defendant no. 1 are co-owner of the suit land which till date as has been brought to the notice of this Court is un-partitioned property and the only contention and dispute is over the relative shares of each of these claims.

Thus, in the light of this established stand and the settled position of law as has been laid down in **Bhartu vs Ram Sarup, 1981, PLJ 204** that every joint owner and in possession of un-partitioned property is owner in possession of every inch of the land unless it is shown by cogent and reliable evidence that the parties had acquiesced over a period of years to this possession of a particular co-sharer which is undisputedly over a long period of time which is not so before this Court. Though it has been contended with much force and vehemence mutation in the name of Matadin entered 1/3 share equal to 10 kanals 7 marlas through rapat no. 277 dated 18.3.1965 Ex. D1 and which possession was handed over to Matadin and which as per the testimony of DW4 Kanwar Singh has been entered on the basis of decree dated 15.10.1963 and as has been observed by the learned appellate court the authenticity of the mutation Ex. PW6/2 is not credible as there has been repeated over writings and cuttings over 1/16 which has been made at places to 1/3 and 3/17 when as per the judgment Ex. P4 Matadin's counsel had made statement that he presses his claim to the extent of 1/16 and even in Ex. P4 leading to filing of execution Ex. PW2/1 Matadin has claimed warrant of possession of 1/16 share in this land bearing khewat no. 30 per jamabandi for the years 1954-55 and thus only bone of contention revolves around the relative shares of the parties.

Counsel for the two sides squarely accept the established position of law that in terms of sections 36 and 38 of the Specific Relief Act question of status of a party in a land dispute where only suit for

permanent injunction is filed, title is to be determined in appropriate proceedings and not in a suit for permanent injunction. Reliance placed on **Faridabad Complex Administration vs Diwan Chand, 1987 PLJ 356** .

Furthermore since civil court is barred from effecting partition in terms of sections 111 and 158 of the Punjab Land Revenue Act as applicable to Haryana and therefore, only the competent authority is to do the same as per the procedure prescribed but it has to be taken note of the fact that a person who has been in long continuation of possession can protect his possession by seeking injunction against any person in the world other than the true owner and even the owner of the property who has been ousted can get back his possession only after adopting due process of law. Reliance placed on **1999 (2) CCC 568 (SC) Prataprai N.Kothari vs John Braganza**.

Thus from the hazy evidence and the fact that more efficacious remedy was available to both these claimants to the land in question and ought to have sought remedy other than seeking a decree for permanent injunction under a camouflage and which is barred by virtue of section 41 (h) of the Specific Relief Act. Thus, the argument that the original owner of this land was one Gopal who has sold in equal shares this land to Bodan and Baldev both sons of Daya Kishan and Ram Chander is admittedly son of Bodan and alongwith Matadin is shown to be co-owner thus reflects that intricate question of not only declaration to their respective shares but as well as partition of the same in accordance with law needs to be undertaken and therefore, findings of learned first appellate court who has sought to

hold and decide the respective shares of these claims and when the court has held them to be co-owners that there being specific shares have come to them which is only determinable by a revenue court and thus it was highly in-appropriate to have done so in the simpliciter suit for permanent injunction and therefore, by such a manner could not restrain the co-owner by any means by way of injunction. Thus, finding to this extent is set aside as returned by the first appellate court. However, the findings that none can dispossess the owner except in due course of law and that the owners shall be at liberty to take actual possession out of suit land which are in possession of un-authorized person needs to be upheld and that the claim of the appellants that they are owners in possession of a particular share of the property is highly un-called-for.

In view of these observations and there can be no relative determination of the shares by the civil court as has sought to be prayed in the appeals and all these claims qua the appeals are highly un-called-for.

In the light of these discussions, there is no merit in both the present appeals and the same stand dismissed.

January 06, 2015
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(Fateh Deep Singh)
Judge