

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1640 of 2011 (O&M)
Date of Decision.05.11.2015

Dharam Pal

.....Appellant

Versus

Ram Murti and others

.....Respondents

Present: Mr. R.N. Sharma, Advocate
for the appellant.

Mr. Sarju Puri, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff's suit for injunction with reference to property claimed and demarcated as red in plaint plan was resisted in his claim by his brother contending that the whole of the property was bequeathed to him by his father through a Will and that the plaintiff was not in possession of any property other than one single room. The trial Court relied on the evidence of witness on the side of the plaintiff who admitted that the plaintiff had his own residence at Nawanshahar and his children were studying in Nawanshahr and that he had been in possession of a room in the whole property. The Appellate Court modified the decree and granted injunction with reference to the portion marked in red as the proof of possession and finding that the sisters who had been arrayed as defendants did not deny the plaintiff's enjoyment of portion of

the house which was marked in red and there was no enmity particularly shown between the sisters and the brother for them to make a plea against the interest of the other contesting defendants. The Court also found that the electricity connection in the property which was said to be in the possession of the plaintiff was also taken in the name of the plaintiff and found that the plaintiff's possession with reference to the property had been established and granted the relief of injunction.

2. Learned counsel appearing on behalf of the appellant seeks to contend that the trial Court's observation relating to the plaintiff being in possession of only one room had not been properly considered by the Appellate Court and the grant of injunction with reference to the other rooms on the property was erroneous. It was also the contention that if the property belonged to the father and on the father's death, the property devolved not merely on the plaintiff but also to the defendant and two other sisters and the plaintiff had only 1/4th share in the property, a claim for injunction in relation to the property of a co-owner of the property cannot be sustained and the decree of injunction granted by the Court was erroneous. The court had found the plaintiff's possession as established with reference to the fact that the plaintiff was shown to be in possession of two rooms, verandah and courtyard and this had been brought out in the written statement filed by defendant Nos.2 and 3 who are the sisters of the plaintiff. They had admitted in the written statement to the plaintiff's possession with reference to the red portion. The Court was holding that there was particularly nothing brought for the sisters to be taking a wrong plea against the interest of the 1st defendant and the statement of defendant Nos.2 and 3 were

taken to be significant to prove the plaintiff's possession with reference to the red portion. The plaintiff's statement as regards the possession of the red portion was to be seen in the context of the statement of the uncle also who had stated that the plaintiff was in possession of the portion shown in the red colour in the plaint. When there was adequate proof with reference to the property in possession of the plaintiff as in red colour then the issue was only whether the plaintiff could have initiated an action for injunction against the 1st defendant, for defendant Nos.2 and 3 themselves were not interested in denying plaintiff's claim for injunction.

3. If in this case, the plaintiff was denying the defendant's right to a share in the property and was seeking for an exclusion of right and an assertion of right of the property which was stated in red colour then, the claim for injunction could have been dismissed. If the plaintiff was only relying on an arrangement between the parties where they had been in possession of various portions of property and the plaintiff felt threatened by the defendant in upsetting the said arrangement, a co-owner in exclusive possession of property by virtue of oral arrangement is enable to initiate an injunction and push the other person who is seeking for distinctive shares to be worked out to file a suit for partition. In this case the person who was trying to deny the title of the plaintiff even with reference to 1/4th share was the 1st defendant and therefore, the person who was denying the plaintiff's right to share in the property is not the person who could be protected in any way and the plaintiff would require to be protected in the exclusive holding of his property till such time as the case to be decided in the manner in which the arrangement

is made. Learned counsel states that the written statement had been filed on behalf defendants No.2 and 3 by the plaintiff's counsel himself and therefore, the statement of defendant Nos.2 and 3 cannot be exhibited. If defendant Nos.2 and 3 did not deny the statement of what they have filed, it is irrelevant that it was brought at the instance of the plaintiff's counsel. It only proves that the defendant Nos.2 and 3 were interested in supporting the case of the plaintiff in seeking for the relief of injunction. If the 1st defendant was aggrieved that the plaintiff was ultimately getting possession of larger extent of what he was entitled to and when the two sisters were supporting the plaintiff's right to initiate action for injunction, it would be open for the defendant to work out his own right by means of a suit for partition.

4. I do not think that there is any error in the approach adopted by the Appellate Court for interference in the second appeal. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

November 05, 2015
Pankaj*