

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

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Regular Second Appeal No.4125 of 2013 (O&M)

Date of Decision: September 28, 2015

Sanjiv Kumar

...Appellant

Versus

Ram Dhan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Naveen Batra, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Hoshiarpur, dated 10.11.2010 granting permanent injunction to the respondent No.1-plaintiff restraining the appellant-defendant from raising any sort of construction in the plot measuring 5 marlas out of the total land measuring 10 marlas, as has been depicted in the site plan attached with the suit out of Khasra No.40/7/1/2 and 40/7/1/1 and from interfering in any manner in the peaceful and lawful possession of the respondent No.1-plaintiff. Appeal preferred against the said judgment has been dismissed by the Additional District Judge, Hoshiarpur, on 10.05.2013.

2. It is the contention of learned counsel for the appellant-defendant that once the respondent-plaintiff is admitting the possession of appellant-defendant on 5 marlas of land, which is not in excess of the share if it is joint ownership property, the injunction could not have been granted, as has been prayed for. He contends that since the possession of the appellant-defendant has not been disputed and only a boundary wall and the foundation for construction of the building has been laid, it could not

adversely affect the rights of the respondent-plaintiff in any manner and, therefore, the judgments and decree passed by the Courts below cannot sustain. In support of this contention, he has placed reliance upon the Division Bench judgment of this Court passed in case titled as *Bachan Singh Versus Swaran Singh 2000(3) R.C.R. (Civil) 70*, as also the Single Bench judgment of this Court passed in case titled as *Kehar Singh and others Versus Joginder Kaur alias Jogindero and others 2004(3) R.C.R. (Civil) 37*.

3. I have considered the submissions made by learned counsel for the appellant-defendant and have gone through the judgments passed by the Courts below as also the judgments on which reliance has been placed by the counsel.

4. It is not in dispute that the plot in question has never been partitioned as in the revenue record it has been shown to be a joint property. The evidence which has been adduced by the respondent No.1-plaintiff i.e. jamabandi for the years 2001-2002, both the co-sharers are shown to be in possession of the property and none of them has been shown to be in exclusive possession of any portion of the suit property. Without the partition having been sought of the suit property, none of the parties in such circumstances, can be said to be in exclusive possession of the said property. Merely because a boundary wall has been raised and the foundation of the building has been laid by the appellant-defendant would not confer a right of exclusive possession upon him, specially when the respondent No.1-plaintiff is not accepting it as such, rather his stand is that he is in possession of each and every portion of unpartitioned property. Had he accepted the aspect with regard to the exclusive possession of the

appellant-defendant, the question of filing the suit did not arise, specially when the appellant-defendant has not been able to prove on the basis of any revenue record that the suit land was ever partitioned between the two brothers namely Bhag Singh and Ram Dhan. It is not in dispute that both these brothers had purchased the plot in question jointly and it was transferred in their name jointly. The appellant-defendant had bought the 5 marlas of land from the successors of Bhag Singh. This clearly shows that the findings recorded by the Courts below are based upon the pleadings and the evidence brought on record by the parties. The judgments, reliance whereon has been placed by the counsel for the appellant-defendant, are where the exclusive possession of the claimants was established, specially when the construction has been completed way back but in the present case, it is an admitted fact that the suit land was purchased by the appellant-defendant in the year 2003 and the suit has been filed on 18.07.2005, the moment the boundary wall was constructed and the foundation was being sought to be laid.

5. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.11148-C of 2013, also stands disposed of as infructuous.

September 28, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**