

107

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1123 of 2015 (O&M)
Date of Decision: 08.10.2015

TARSEM SINGH

.....Appellant

Vs

GURDEEP SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Momi, Advocate
for the appellant.

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?*

RAJ MOHAN SINGH, J.

CM Nos.3277-78-C of 2015

For the reasons mentioned in the applications delay of 24 days in filing and delay of 22 days in refiling the present appeal is condoned.

Applications stand disposed of.

RSA No.1123 of 2015

[1]. Plaintiff Tarsem Singh filed a suit for permanent injunction seeking restraint order against the defendant from alienating specific *khasra* number as shown in the plaint.

[2]. Plaintiff has alleged that he alongwith defendant is co-sharer in joint possession of the land in dispute and they belong

to the same family. The land has not been partitioned by metes and bounds. Partition proceedings in respect of the suit property are pending in revenue Court.

[3]. It has been alleged that without getting the suit land partitioned defendant is bent upon to alienate specific *khasra* number abutting the road to the stranger and has started process of bargain to sell specific *khasra* number 9//1/2 and 8/2 which are adjacent to the road and passing towards north side of the suit property.

[4]. Suit has been contested by the defendant on all customary pleas including ground of maintainability of the suit. Defendant has already filed suit for permanent injunction titled as Gurdev Singh vs. Gurmail Kaur vide Civil Suit No.328 of 2008 on 01.07.2008, which is still pending and the cause of action in the said suit is also the same.

[5]. Defendant claimed that he is in exclusive possession of the suit property and plaintiff is not in possession of the same. Plaintiff can take possession of the property only by way of partition. The defendant can alienate the property even by specific *khasra* number which is in his exclusive possession and such type of sale is always subject to partition.

[6]. Replication was filed. On the basis of the pleadings, the trial Court framed the following issues:-

“1. *Whether the plaintiff is entitled for a decree for permanent injunction as prayed for? OPP*

2. *Whether the plaintiff and defendant are co-sharer*

in joint possession and belonging to the same family of the suit property? OPP

3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
5. *Whether the plaintiff has not come to the court with clean hands, if so what effect? OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
7. *Relief.”*

[7]. Both the parties led evidence. Trial Court discussed issues No.1 to 3 jointly and dismissed the suit on the ground that the land under possession of the co-sharer in specific *khasra* number can be sold till the joint holdings are partitioned. In such a situation vendee would step into the shoes of vendor and such a vendee has a right to remain in possession of the land so sold till the same is partitioned amongst all the co-sharers. Reliance can be placed on **Sant Ram vs. Daya Ram, AIR 1961 (Punjab) 528 (D.B.)** which was subsequently followed in **1981 PLJ Page 204 Bhartu Ram vs. Ram Sarup** (Full Bench) and the view has been reiterated in Full Bench judgment of this Court in **Ram Chander vs. Bhim Singh, 2008(3) RCR (Civil) 685** (Full Bench).

[8]. The appellant has formulated following questions of law in para No.11 of the grounds of appeal:-

- “1. Whether the judgments passed by the Ld. Courts below is result of misreading of evidence?*
- 2. Whether plaintiff/appellant is entitled for the permanent injunction against the defendant/respondent?*
- 3. Whether the judgments passed by the Ld. Courts below is a result of non application of mind?”*

[9]. Question No.1 does not arise inasmuch as that there is no misreading of evidence, rather interpretation of co-sharership is based on sound principles of law as propounded by authoritative judgments of this Court as mentioned in preceding para. As regards question No.2 it is found that concept of co-sharership shows that the injunction cannot be claimed against co-sharer. The co-sharer in exclusive possession of the land can sell that very portion subject to partition of the joint land and he can also oust other co-sharers till such time when the land is partitioned by metes and bounds. Otherwise in the absence of exclusive possession every co-sharer would be deemed to be in possession of every inch of land and that is also subject to partition of land by metes and bounds. Concept of co-sharership is evolved and discussed in the precedents cited hereinabove would make this issue totally redundant and the appellant cannot be held entitled for any permanent injunction against the defendant.

[10]. Question No.3 becomes irrelevant in view of questions No.1 and 2. Both the Courts have decided the controversy with reference

to evidence on record and by appreciating legal position in right perspective.

[11]. In view of aforesaid, no divergence can be pleaded from the views taken by the Courts below. Consequently this appeal is totally found to be bereft of merit and the same is accordingly dismissed.

October 08, 2015

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**(RAJ MOHAN SINGH)
JUDGE**