

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

Regular Second Appeal No.1197 of 2015 (O&M)

Date of decision: 30.6.2015

Hari Om Singh and another

... Appellants

Versus

Ram Nath and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.N.D.Achint, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The defendants are in second appeal. The first argument raised by Mr.Achint in assailing the appellate decree is that a co-sharer cannot be restrained by a permanent injunction from being dispossessed from joint property or stopped from carrying out construction or alienating the property by specific land description. The legal position has been explained in **Maharwal Khewaji Trust (regd.) Faridkot v. Baldev Dass**; 2004 (4) RCR (Civil) 760 and **M/s DCM Shriram Consolidated Ltd. v. Jai Singh**; 2006 (2) Civil Court Cases 106 that an injunction can well be granted by the civil court to protect rights of co-sharers in status quo pending decision in the main case, suit, appeal or other legal proceeding, so as not to effect rights in joint land where there is long settled possession.

2. The second contention of Mr.Achint is that the appellate court in the decree exceeded its jurisdiction in making an order against dispossession of the plaintiffs, the appellants being defendants in the suit.

3. I asked Mr.Achint to show me the prayer clause in the original plaint from his papers. That has been shown to the Court. Para. 11 reads as follows : -

“11. It is, therefore, prayed that a decree for declaration to the effect that the mutation No.2195 is legal, valid and is liable to be restored in its original position and the impugned mutation No.2197 is illegal, void, abinitio, nonest, contrary to law and is not binding on the plaintiffs in any manner what-so-ever and is liable to be cancelled; with a decree of permanent injunction on restraining the defendants No.1 to 3 from alienating the land in suit in collusion with the defendants No.4 to 6 on the basis of wrong revenue entries, in any manner what-so-ever, owned and possessed by the plaintiffs qua the land in suit detailed and described in para No.1 of the plaint, may kindly be passed in favour of the plaintiffs and against the defendants with cost.

Any other relief to which this Honourable court deems fit and proper may also be granted to the plaintiffs.”

4. Mr.Achint has expressed no other disagreement with the decree found at page 30 of the paper-book except to the extent of the last line where it is recorded against the defendant that he is restrained from: “...dispossessing the plaintiff from the suit property.” It is not disputed that the suit land is agricultural land and under cultivation of co-sharers. The defendants have become co-sharers but are not members of the original land owning family.

5. Mr.Achint's clients bought the property from one of the co-sharers and, therefore, stepped into their shoes and become co-sharers in the

suit property to the extent of the share purchased. However, as he says this, he misreads or I may say overreads the decree where there is no positive or offensive direction or permanent injunction that the defendants would be dispossessed of their share. Their share has not been disturbed by the decree. The entire exercise of trial has been to protect the rights of all the co-sharers and hold them in a balance, whether original or by sale and to maintain the status quo with respect to the land in dispute till partition proceedings are not initiated and the land partitioned by any of the modes of partition available till such time each owns and possesses separately the land to the extent of his share or the share described in the registered conveyance deed. It is well settled that even where the khasra numbers are mentioned in the sale deed, as is the situation in this case, those khasra numbers are not to be read as conferring any right to a particular piece of land which identification *inter se* would remain subject to partition proceedings, when resorted to and adjudicated. I find nothing wrong what the lower appellate court records: -

“The description of the land which has been depicted by respondents no.8 to 11 is quite contrary with the description of the land mentioned in the sale deed Ex.P1. It is not disputed that no one can alienate the land more than his share. The respondents no.8 to 11 nowhere adduced any kind of evidence to prove the plea which has been taken by them in their written statement. The appellants took the plea that the sale deed no.9720 dated 5.9.1995 is a result of fraud and misrepresentation but in this regard there is no sufficient evidence on record. Moreover, the sale deed no.9720 dated 5.9.1995 is not under challenge even in the counter claim also. No doubt in the said circumstances the mutation is liable to be recorded in favour of purchaser of land by virtue of sale deed no.9720 dated 5.9.1995 Ex.P1 on record in accordance with law. The learned trial court has

rightly held that the mutation is required to be recorded on the basis of the sale deed Ex.P1 in favour of the purchaser and the appellants are also liable to be restrained from dispossessing the plaintiffs from the suit property and from alienating the suit land in favour of anyone except in due course of law.”

6. No ground for interference is made out.

7. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

June 30, 2015

Paritosh Kumar