

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5064 of 2013
Date of Decision : 09.12.2015

Paras RamAppellant

Versus

Nand KishoreRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. J.K. Sibal, Sr. Advocate
with Mr. Dhawal Bhandari, Advocate
for the respondent.

Surinder Gupta, J.

Suit filed by plaintiff-appellant, seeking the relief of permanent injunction to restrain the defendant-respondent from raising the construction over any specific portion of suit property shown with red colour in the site plan attached with the plaint till its partition, was dismissed by the Additional Civil Judge (Senior Division), Rewari and the appeal filed by plaintiff also met the same fate before the Ist Appellate Court.

2. In later part of the judgment the parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. The case of plaintiff, in brief, is that he is having 1/192 share in land measuring 183 *kanals* 19 *marlas* situated in the revenue estate of village Kanuka, as fully described in the plaint, and the defendant-Nand Kishore has 1/32 share therein. Some of the land falls on Rewari-Saton road while the remaining is quite away from that road. The suit land has not been partitioned so far. The defendant dishonestly wants to raise

construction over the property abutting the main road without having any right, title to do so and has not responded to the request of plaintiff to refrain from doing so. Hence this suit.

4. Defendant contested the claim of plaintiff with the plea that the site plan produced by plaintiff pertains to only 86 *kanals* of land of Chak Kuan Todiwala. The site plan of two other parcels of suit land has not been produced. A family partition took place between Babu Lal, Bal Kishan (father of plaintiff), Radhey Shyam, Molhar @ Mohan Lal and defendant on 03.08.1982 which was duly written and signed by the parties. Under the settlement 1/4th share of Molhar @ Mohan Lal in Chak Kuan Todiwala was given to Babu Lal, Bal Kishan, Radhey Shyam and Nand Kishore and 1/4th share of Babu Lal and others in other two parcels of suit land was given to Molhar @ Mohan Lal. Plaintiff has deliberately suppressed that family settlement. The property shown with blue colour in the site plan (Ex. DW-3/1) fell to the share of plaintiff and land measuring 5 *kanals* 15 *marlas* shown by green colour in the above site plan comprised in rectangle no. 31 *kill*a no. 3 fell to the share of defendant. Similarly, separate portion of suit property fell to the share of other co-owners. Family partition was acted upon by the parties. In the year 2001, defendant constructed two *chappars*, two tin-sheds, latrine, bathroom and water tank in the land which had fallen to his share. Even plaintiff had been admitting the defendant to be in exclusive possession of the land bearing rectangle no. 31 *kill*a no. 3 measuring 5 *kanals* 15 *marlas*, as such, he has no right to restrain the defendant from putting the

land in his possession for beneficial use.

5. Learned Additional Civil Judge (Senior Division) observed that the defendant has made construction in the specific portion of joint land which is in his possession. The land in possession of defendant is less than of his share in joint land and in no manner amounts to ouster the plaintiff in joint land.

6. Ist Appellate Court relied on the observations of Division Bench of this Court in case of **Bachan Singh vs. Swaran Singh 2000 (3) PLR 416**, which read as follows:-

“16. *In this view of the matter, we are unable to agree to the propositions laid down by the learned single Judge of this Court in **Nazar Mohd. Khan v. Arshad Ali Khan and Ors. (supra)**¹ wherein his Lordship broadly stated that there is no denying the fact that a co-sharer has no right to raise construction until the land is partitioned by metes and bounds and so even when one of the co-sharers is in exclusive possession of a particular piece of land any other person can seek injunction restraining the other co-owner from raising construction. We accordingly overrule the said decision of the learned single Judge of this Court and also the decisions in **Mst. Parsini alias Mono vs. Mahan Singh, 1982 P.L.J. 280, Om Parkash and others vs. Chhaju Ram, 1992 P.L.J. 546** and **Daulat***

1 Nazar Mohd. Khan Vs. Arshad Ali Khan and others, 1996 PLJ 33, 1996 (1) RRR 117

Ram vs. Dalip Singh 1989 (1) P.L.R. 523.”

7. Not satisfied with concurrent judgments of lower Courts against him, plaintiff has come up with this second appeal.

8. Learned counsel for the appellant has argued that defendant has raised the plea of family settlement but has failed to prove the same. The partition proceedings are pending before the revenue Court. The land in which plaintiff is raising construction, is situated on the main road and a co-owner cannot be allowed to raise construction over the joint land without getting his share partitioned. He has further argued that defendant is not in possession of any portion of suit land but is threatening to raise construction over joint land of parties adjoining Rewari-Saton road which is more valuable by giving it on lease. This act of defendant would be prejudicial to claim of other co-owners in the suit land.

9. Firstly I take the plea of appellant that defendant is not in possession of any portion of the land. Even in grounds of appeal it is alleged that defendant is in possession of land bearing rect. no. 31 *killa* no. 3 shown in green colour in site plan (Ex. DW-3/1). This displace the argument of learned counsel for the appellant to this effect. So far as the plea of family settlement raised by defendant is concerned, the same has not been endorsed by Courts below. Ist Appellate Court has categorically held that there is no evidence of formal partition of the joint holding meaning thereby that the land is still joint. Ist Appellate Court has rightly relied upon the observations in the case of

Bachan Singh (supra) to observe that raising of construction over the property in possession of the defendant will in no manner result in ouster of plaintiff from joint land. The site plan (Ex. DW-3/1) shows that even plaintiff who is having 1/192 share in the suit land, is also in possession of land on the main road.

10. On perusal of lower Court record and judgments of both the Court below I find no legal or factual infirmity therein calling for any interference. Learned counsel for the appellant has not been able to point out that any of the finding recorded by the Courts below are based on misreading or misinterpretation of evidence on record. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

December 09, 2015
jk

(SURINDER GUPTA)
JUDGE