

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

RSA No.1499 of 2015 (O&M)

Date of decision: 31.08.2015

Babu Singh

... Appellant

Vs.

Darshan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Sunny K. Singla, Advocate, for the appellant.

Mr. Balraj Singh Sidhu, Advocate, for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of both the Courts below, whereby, the suit for permanent injunction restraining the respondent-defendant from making any type of construction over any portion of land measuring 16 kanals comprised in khewat No.181 khatauni No.465 and bearing khasra No.123//7(8-0) 14(8-0) and as well as, to change the nature of the suit land, during the partition proceedings, has been dismissed.

Mr. Sunny K. Singla, learned counsel appearing on behalf of the appellant-plaintiff submits that suit was filed on 06.09.2012, whereas, partition proceedings with regard to joint khata situated in the revenue limits of village Lelewala, Tehsil Talwandi Sabo, District

Bathinda in respect of land described in the suit, as well as in abadi deh is pending before the revenue authorities. It is during the pendency of the proceedings, respondent-defendant raised construction and wanted to take the benefit of constructed portion. He further submits that the trial Court, while entertaining the application, filed under Order 39 Rules 1 and 2 CPC, granted the injunction order and thereafter, dismissed the suit, on the ground that both the parties had raised the construction. Even the lower Appellate Court has also granted the injunction by affirming the finding rendered by the trial Court. In support of his aforementioned contention, he relied upon the judgment of this Court in Rishal Singh and others vs. Shri Bhagwan and another **2007(5) R.C.R.(Civil) 393**, to contend that co-owner is not permitted to raise the construction on the piece of land, until and unless the same is partitioned. He further submits that following substantial questions of law arise for adjudication of the present appeal:-

“i) Whether the raising of construction by the defendant will affect the rights of the plaintiff who is also a co-sharer in the suit land as the defendant would claim exclusive possession over the suit property by raising the construction in partition proceedings?

ii) Whether the Courts below have wrongly dismissed the suit filed by the plaintiff without recording any finding to the effect that the defendant is proved to be in

exclusive possession the suit land on which he is raising the construction?

iii) Whether the findings and observations of the Courts below are based on legal provisions and record as well as pleadings of the parties?”

Mr. Balraj Singh Sidhu, learned counsel appearing on behalf of the respondent submits that both the Courts below rightly dismissed the suit, as there is no illegality and perversity in the finding, much less, appellant-plaintiff had admitted that the respondent is owner in the abadi deh, therefore, the partition proceedings are pending for adjudication and suit is not maintainable. As the plaintiff is found in exclusive possession, therefore, injunction sought has rightly been rejected, much less, no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

Noticing the rival contentions of learned counsel for the parties to the lis, as well as, facts culled out therefrom, it is a matter of record that the partition proceedings in respect of the suit land and in abadi deh, which is allegedly, in joint ownership between both the parties to the lis, being co-sharers are pending.

It is settled law that until and unless co-sharer, is found in exclusive possession, cannot seek injunction but in case, position is

contrary, the injunction can be granted.

There is no documentary evidence to show/prove the exclusive possession, though the parties to the lis, raised the construction in the property in which they were residing but the fact remains that property has yet to be partitioned by metes and bounds. The respondent-defendant cannot raise the construction during the pendency of the partition proceedings by taking the benefit for the purpose, of adjustment by raising a plea, that he already is in possession of the newly constructed area. In my view, findings rendered by the Courts below, in declining the relief to the appellant-plaintiff, particularly, when he had interim injunction during the stage of suit and appeal, are not sustainable.

In view of what has been observed above, the substantial questions of law, are answered in favour of the appellant-plaintiff and against the respondent-defendant and the respondent-defendant is restrained from raising the construction during the pendency of the partition proceedings or till finalization of the partition proceedings. The ratio descendi culled out in the judgment of this Court in Rishal Singh's case (supra), is squarely applicable to the facts and circumstances of the present case.

Accordingly, the appeal is allowed.

Parties shall not raise any construction.

It is made clear that revenue authority shall decide the partition proceedings without being influenced with aforesaid finding

and shall not be swayed with regard to construction raised by the defendant, during the pendency of the proceedings.

(AMIT RAWAL)
JUDGE

August 31, 2015
savita