

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

R.S.A No. 878 of 2013 (O&M)

Date of decision:- 04.05.2015

Jas Ram

...Appellant

Versus

Bis Ram

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. M.S. Kathuria, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellant.

Mr. Pawan Kumar, Sr. Advocate with
Mr. Anshuman Mandhar, Advocate
for the respondent.

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

RITU BAHRI J.

C.M. No. 2428-C of 2013

For the reasons mentioned in the application, delay of 25
days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 878 of 2013

The present regular second appeal is directed against the
judgment and decree dated 17.08.2012 passed by Addl. District Judge,

Palwal whereby the judgment and decree dated 10.06.2010 passed by Addl. Civil Judge (Sr Divn.) Palwal was dismissed whereby the suit of the plaintiff/respondent (herein after to be referred as 'the respondent') was dismissed.

Brief facts of the case put forth by the respondent is that he was claiming himself to be owner in possession of agricultural land comprised in Khewat No. 280, Khatoni No. 374 Rectangle No. 20, Killa No. 25 (9-4), measuring 9 kanals 4 marlas, situated within the revenue estate of village Bhulwana, Tehsil Hodal, District Faridabad as per jamabandi pertaining to the year 1992-93. He further claims that the defendant/appellant (for short 'the appellant') has no concern with right, title or interest in the suit land. However, in the revenue record, his name to the extent of 1/6th share in the suit land is wrongly entered. The respondent claimed decree for perpetual injunction against the appellant not to interfere in his possession over the suit land.

On notice, the appellant appeared and filed his written statement and denied the averments made by the respondent and submitted that the suit land is under his cultivating possession and prior to him, his father had been cultivating the land as “Hissedar” being co-sharer in the suit land. The appellant has been in cultivating

possession of the suit land for the last more than 50 years. It has been denied that the respondent had sown the wheat crop and the wheat crop standing on the suit land belongs to him.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner in possession of the suit property mentioned in para No. 1 of the plaint? OPP*
- 2. Whether the plaintiff is entitled to decree for permanent injunction on the grounds mentioned in the plaint? OPP*
- 3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 7. Relief.”*

After perusing the revenue record, it reveals that appellant and respondent are co-sharers in possession of the suit land. In jamabandi for the year 1992-93 (Ex P1), respondent has been shown as co-sharer to the extent of 5/6th share and Ram Sahai father of the appellant has been shown as owner in possession to the extent of 1/6th share in the suit land. In the subsequent jamabandis for the year

1997-98 (Ex P3, for the year 2002-03 (Ex P5) and in the copies of Khasra Girdawari 2001-02 (Ex P2), 2003 to 2005 (Ex P4), 2006 to 2008 (Ex P6) 2008 to 2010 (Ex PX), same entries have been repeated. Once the father of the appellant was shown to be owner in possession of the suit land to the extent of $1/6^{\text{th}}$ share, the suit of the respondent was dismissed.

However, on appeal, the Lower Appellate Court reversed the finding of the trial Court and decreed the suit of the respondent to the extent that he is co-sharer and the appellant was restrained from completely ousting the respondent from the suit land and not to interfere in his possession, ownership and co-sharership to the extent of $5/6^{\text{th}}$ share.

Reference at this stage can be made to judgment of Hon'ble the Supreme Court in a case of ***Tanusree Basu and others v. Ishani Prasad Basu and others, 2008 (3) RCR (Civil) 519*** wherein suit was filed for partition of joint family property. Status quo order was passed by the Court. Plaintiff dispossessed the defendant from a flat in his exclusive possession. Restoration of status quo ante by order of interim mandatory injunction directing the plaintiffs to put defendant in possession of the suit premises, rightly by High Court. It was held that if part takes recourse to any contrivance to dispossess

another, during the pendency of the suit either in violation of the order of induction or otherwise, the Court will have the jurisdiction to restore the parties back to the same position. If a person is entitled to prohibitory injunctions, a fortiori he shall also be entitled to mandatory injunction. In para 23 and 24, it has been observed as under:-

“23. It is not the law that a party to a suit during pendency thereof shall take law into his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit either in violation of the order of injunction or otherwise, the court indisputably will have jurisdiction to restore the parties back to the same position.

24. In Israil & Others v. Samset Rahman & Others [(1914) 18 Cal WN 176 ; AIR 1914 Cal 362], Mookerjee, J. held that a co-owner being in exclusive possession of a joint property would be entitled to injunction. If a person is entitled to a prohibitory injunction, a’ fortiori he shall also be entitled to a mandatory injunction. [See also Spandan Diagnostic & Research Centre Private Limited & Ors. v. Shri Ritendra Nath Ghosh & Ors. 2000 (2) Cal LT 83].”

Thereafter, a co-ordinate Bench of this Court in a case of ***Jai Karan Sharma v. Ram Kumar, 2009 (1) RCR (Civil) 546*** examined a case where a co-owner of land was in exclusive possession of certain portion of the land and raised construction in the land which was in his exclusive possession. The other co-owner seek injunction restraining the co-owner from rasing the construction. Remedy of other co-owner lies in filing suit for partition. In para 13 and 20 of the judgment, it has been observed as under:-

*"13. It is also the contention of the learned counsel for the petitioner that injunction against co-owner can only be granted if the act of co-owner amounts to ouster or adverse to interest of co-owner who is out of possession. The check on co-owner is only with regard to the act of waste, ouster or illegitimate use and not otherwise. Learned counsel for the petitioner also contends that the orders passed by the learned courts below are contrary to the decision of Division Bench of this court in the case of **Bachan Singh v. Swarn Singh, 2000(3) RCR(Civil) 70 : 2000(2) PLJ 143**, wherein this court was pleased to lay down as under :-*

"17. On a consideration of the judicial pronouncements on the subject, we are of the opinion that :

(i) A co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co- owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner."

20. The Division Bench of this court in the case of ***Bachan Singh v. Swarn Singh***

(supra) has categorically held that remedy of co-owner is to seek partition and not injunction restraining co-owner in possession. It may further be noticed that in the present case both the parties have purchased the land from the co-owner and have been put in possession of specific portion of the land. Thus, the authority relied upon by the learned senior counsel has no application to the facts of the present case.

The judgment passed by the lower Appellate Court decreeing the suit of the respondent to the extent that he is co-sharer and the appellant was restrained from completely ousting the respondent from the suit land and not to interfere in his possession, ownership and co-sharership to the extent of 5/6th share, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

May 04, 2015

G Arora

(**RITU BAHRI**)
JUDGE