

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

RSA No.3329 of 2015 (O&M)

Date of Decision: December 10, 2015

Malkiat Singh (deceased) through LRs Appellants

vs.

Amar Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vinod Khunger, Advocate for the appellants.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 11.03.2015 passed by learned Addl. District Judge, Ferozepur, affirming the judgment and decree dated 29.08.2011 passed by learned Civil judge (Sr. Divn.), Ferozepur, vide which the suit of the plaintiffs for permanent injunction was dismissed with costs.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

The plaintiffs had claimed that they are in possession of the suit land measuring 84 kanals 10 marlas. It is also denying fact that the partition proceedings are pending between the parties.

The plaintiffs further claimed that the exchange of 40 kanals land had taken place between the plaintiff and defendant

No.1. He also claimed that 20 kanals 10 marlas are in possession of his wife (co-plaintiff), whereas he is in possession of 64 kanals of land.

The stand of the defendants is that the partition proceedings are pending before the Financial Commissioner, Punjab, Chandigarh, and that possession is still joint.

The lower court held that exchange is not proved. The exclusive possession of the plaintiffs is also not proved. Consequently, the injunction was refused. The findings were upheld in appeal.

I am of the view that the relief of the injunction is a discretionary relief. The present suit is a clever move on the part of the plaintiffs to seek exclusive ownership of 84 kanals, which is claimed to be in their possession, on the basis of civil decree in the present suit. In the partition proceedings, normally the possession is protected. It cannot be believed that the defendants want to interfere in the peaceful possession of the plaintiff. Had it been so, the defendants would not have resorted to partition proceedings to seek possession of separate parcel of land by way of partition. At the filing of the written statement, the partition proceedings had gone up to the Financial Commissioner, which means that the partition proceedings are almost mature. The findings of facts have been recorded by both the courts below.

Moreover, in the given circumstances, the plaintiffs are not to be granted discretionary relief of injunction so as to give the

undue advantage to them in the partition proceedings, which are almost mature.

Thus, there is no ground to interfere in the impugned judgment and decree. Hence, the present regular second appeal stands dismissed.

December 10, 2015
sarita

(KULDIP SINGH)
JUDGE