

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1051 of 2014 (O&M)
Date of Decision.01.10.2015

2. RSA No.656 of 2014

Sohan Singh and others

.....Appellants

Versus

Sukhwinder Singh

.....Respondent

Present: Mr. Anil Chawla, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

1. The plaintiffs are the appellant in both the appeals. The appeals arise out of the same suit in which the defendant had filed an application for counter claim treating himself to be the co-owner of the property. The plaintiffs' suit was rested on a claim that the property was classified as *jumla mushtarka malkan* in the revenue records and his father Harnam Singh son of Moola Singh was entered as a person who was paying rent in respect of the property. According to the plaintiffs that entry was corrected some time in the year 2008 behind the back of the plaintiffs and the plaintiffs have themselves got recorded their names as persons in possession in the revenue records. The counsel states that it would not bind them and sought for relief of injunction based on the entry in the name of the father and as legal heirs of the father.

2. The defendant claimed that he is co-sharer of the property and he was in possession of the property on the date of suit. His contention was that the entry was modified by application given to the Collector and he was entitled to be treated as a co-sharer of the property as regards the whole of the property. The trial Court dismissed the suit and found that the plaintiffs' father had admittedly died some time in the year 1985 and the entries continuing in the name of the father ought to be, therefore, taken as wrong entry. Though the trial Court found that the defendant had not proved himself that the entry in his name was made after any notice to the plaintiffs, the Appellate Court in the appeal filed by the plaintiffs dismissed the appeal but also corrected the decision of the trial Court and held that the entry which was made in the name of the defendant would require to be confirmed.

3. Learned counsel appearing on behalf of the plaintiff-appellant would contend that the plaintiffs' possession must be presumed as continuing after the father died and read to me the evidence of the defendant where he had admitted that the entries stood in the name of plaintiffs' father till the year 2008 and that when the entries were corrected, the plaintiffs were not made aware of the same. The counsel would contend that defendant himself had admitted in evidence that the plaintiffs' father had been a co-sharer and that the plaintiffs' right to possession cannot be in any way disturbed or modified by virtue of wrong entry. The entries as having been made wrongly was literally admitted by the defendant by the fact that no notice had been given to the plaintiffs before any modification of the entries.

4. This was simple suit for injunction. The injunction was

sought on the basis that they were in possession and all that the plaintiffs could rely on was the entry in the name of plaintiffs' father. If that entry had been modified in the year 2008 in the revenue records and the plaintiffs could contend that they continued in possession and that they were paying lease to the proprietor, the best that the plaintiffs could have done was to give evidence of the so-called payment of lease to the person who was the proprietor and clearly established with reference to the nature of possession and the crop which they had raised and the payment of lease. If the plaintiffs would only rely on the entry in the name of the father to claim injunction and the Court has found that the plaintiffs have not established their possession, I will take it to be a proper appreciation of fact and evidence that would require no intervention before this Court. If an entry has been modified, the appropriate action for any modification or correction could be there only before the revenue authorities themselves and the plaintiffs' suit for injunction itself was not competent. If the defendant was merely claiming his right on the basis of the entries and was seeking for treating himself as co-sharers in respect of the property, I do not find any error by virtue of the character of property itself which was such that the title to the property vest in the co-sharers, property being the *jumla mushtarka malkan*.

5. The counsel would also argue that the Appellate Court itself has found that the defendant was not a co-owner but has still granted the relief. If there is any entry made in the revenue records which according to the plaintiffs is not correct, the proper remedy will be to approach the revenue authorities. They will not have any relief in their

suit for injunction. I do not find that there is any error committed by the two Courts below for modification in the second appeal. There exists no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

October 01, 2015
Pankaj*