

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

RSA No.3973 of 2015 (O&M).

Date of Decision: 04.12.2015.

Santosh (now deceased) through her legal representatives Bhagwan Dass
and others

....Appellants.

VERSUS

Laxman and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Rakesh Nagpal, Advocate for the appellants.

SNEH PRASHAR, J.

CM-9696-C-2015

This is an application filed under Chapter 1 Part C Rule 2(b)
Volume V Punjab and Haryana High Court Rules and Orders read with
Order XXII Rule 3 and 11 of the Code of Civil Procedure (for short, “the
Code”) seeking permission to file the appeal by the legal representatives of
deceased-plaintiff No.1 Santosh.

In view of the grounds mentioned in the application, same stands allowed.

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1. This is a Regular Second Appeal filed by appellants Bhagwan Dass and others, successors in interest of deceased Santosh daughter of Kasturi-plaintiff No.1 impugning the judgment and decree dated 28.05.2012 passed in Civil Suit No.22 of 2007 by learned Additional Civil Judge (Senior Division), Siwani, dismissing the suit for permanent injunction filed by plaintiff Santosh and others against respondent No.1-defendant Laxman (hereinafter referred to as the “defendant”), which was upheld by the first appellate Court vide judgment and decree dated 07.02.2015.

2. The facts garnered from the record are as under:-

A suit for permanent injunction was filed by plaintiffs Smt. Santosh and others praying for a permanent injunctive order restraining the defendant from interfering into their peaceful possession on the agricultural land comprised in Rect. No.7, Killa No.10-Shumal (4-9), Rect. No.8, Killa No.4-Janoob(5-13), 6-Shumal(4-9), 7-Shumal(3-6) as per register Karwahi Chakbandi No.807 dated 10.03.2002, 16.05.2000 at Sr. No.303/1, Seema Bandi No.128, situated within the revenue estate of Pana Lohri at Siwani, Tehsil Siwani, District Bhiwani (hereinafter referred to as the “suit land”). It was pleaded that the suit land was previously owned and possessed by Smt. Kasturi-mother of the plaintiffs and after her death they have become owners and are in cultivating physical possession of the same. The defendant is a stranger qua the suit land but had been threatening to forcibly

enter into possession and had also filed a false application for correction of Khasra Girdawari before the Assistant Consolidation Officer, Hisar, Camp at Siwani with an intention to grab their land.

3. The defendant-respondent No.1 contested the suit. In the written statement filed by him, he averred that the parents of the plaintiffs had leased out 1/3rd share out of 36 Bighas land to him at the rate of Rs.20/- per year. Subsequently, the plaintiffs alongwith their family members agreed to sell the land to him for a consideration of Rs.60,000/- per acre. Total sale consideration was paid to them in the presence of one Laxman and Gopi Ram son of Dhan Ram. However, the sale deed could not be executed and the mutation on the basis of inheritance was also not sanctioned. The plaintiffs and their other family members promised to execute the sale deed after sanctioning of the mutation. Though the brothers of the plaintiffs executed sale deeds No.726 dated 19.09.2000, No.741 dated 20.09.2000 and No.374 dated 28.07.2003 in his favour but the plaintiffs who were residing at their in-law's place could not do so. The plaintiffs had now become greedy and have retracted from their promise. The new numbers of the suit land were said to be the numbers mentioned in the plaint, the total area of which is 19 Kanals 11 Marlas. It was alleged that he (defendant) has already constructed boundary wall around the suit land.

4. On the pleadings of the parties, following issues were framed:-

(1) Whether the plaintiffs are entitled for decree of permanent injunction as prayed for in the head note of the plaint? OPP.

(2) Whether the plaintiffs are entitled to relief of mandatory injunction as prayed for? OPP.

(3) Whether the suit is not maintainable in the present form? OPD.

(4) Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD.

(5) Whether the plaintiffs are estopped by its act and conduct to file the present suit? OPD.

(6) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.

(7) Whether the plaintiff has not come to the Court with clean hands? OPD.

(8) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. On scrutiny of the ocular as well as documentary evidence led by the parties and considering the submissions made on their behalf, learned trial Court came to the conclusion that the plaintiffs had not sold their share in the suit land to the defendant but at the same time held that the plaintiffs are not in exclusive/ specific possession of the suit land and dismissed their suit.

7. Plaintiffs preferred an appeal against the judgment and decree dated 28.05.2012 passed by learned trial Court. Learned Additional District Judge, Bhiwani holding that the plaintiffs and the defendant are co-sharers in joint possession and being co-sharers cannot seek injunction against the defendant affirmed the findings of learned trial Court and dismissed the appeal vide judgment and decree dated 07.02.2015.

8. Feeling aggrieved, the appellants have filed the instant Regular

Second Appeal.

9. The submissions made by Mr. Rakesh Nagpal, learned counsel representing the appellants have been considered.

10. Learned counsel for the appellants argued that the story set up by the defendant that the parents of the plaintiffs had given the suit land to him on lease and that the plaintiffs and their other family members had sold the land to him for a consideration of Rs.60,000/- per acre, was neither believed by learned trial Court nor by first appellate Court. When admittedly mother of the plaintiffs was originally the owner-in-possession of the suit land and the revenue record i.e. Jamabandis and Khasra Girdawaris reflected her possession even after her death, it can be assumed without hesitation that the plaintiffs being her legal heirs are in cultivating physical possession of the suit land. The defendant may have purchased share of brothers of the plaintiffs but on the basis of the alleged sale deeds executed in his favour he cannot illegally and forcibly interfere into the exclusive possession of the plaintiffs on the suit land. To support his argument, learned counsel relied upon Akhtar & others vs. Israil & another, 2012(4) Law Herald 3064.

11. The facts in hand are completely distinguishable from the facts of Akhtar & others' case (supra) relied upon by learned counsel for the appellants. No document, revenue or otherwise, could be produced by the appellants to prove their exclusive possession on the suit land. It may be true that the defendant had failed to substantiate the plea raised by him but it is a settled proposition of law that the plaintiffs can succeed only on the

strength of their own case and can take no advantage of the weakness, if any, in the case of the defendant. The defendant could not prove that the suit land was leased out to him by parents of the plaintiffs but after the death of the mother of the plaintiffs, who was the original owner-in-possession of the suit land, the land by natural succession was inherited by the plaintiffs and their brothers. The defendant tendered in evidence sale deeds Ex.DE, Ex.DF and Ex.DG to support his claim that he had purchased part of the suit land from other co-owners.

12. As per findings of learned first appellate Court in para no.12 of the judgment, the entries in the Jamabandi for the year 1994-95 prove that the respondent is joint owner to the extent of 1/6th share in the total land measuring 36 Bighas and the plaintiffs are also owners of 1/6th share. According to the Khasra Girdawari Ex.P2, Smt. Kasturi is recorded as owner-in-possession of the suit land but admittedly Smt. Kasturi died long ago and the land was inherited by her legal heirs. In other words, all her legal heirs became co-sharers were in joint possession of the suit land. The defendant having purchased shares of brothers of the plaintiffs in the suit land, stepped into the shoes of the vendor-co sharers and became a co-owner in joint possession. In **Jangir Singh vs. Naranjan Singh and others, 2015(1) R.C.R.(Civil) 149** it has already been held by this Court that a co-owner in joint possession cannot seek an injunction against other co-owner and the only remedy available with him is to seek partition of the joint land.

The plaintiffs and the defendant being the co-owners, the suit of the plaintiffs for permanent injunction is not maintainable. There being

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no adversity or perversity in the judgments of learned trial Court as well as first appellate Court and there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

04.12.2015
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