

RSA No.132 of 2014

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

RSA No.132 of 2014

Date of Decision: September 08, 2015

Satya Rani

...Appellant

Versus

Balkar Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Kuldip Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgments and decree passed by the Courts below vide which the suit for permanent injunction restraining the defendants from dispossessing the respondent-plaintiff from the suit land forcibly and illegally or in any other manner, has been decreed.

Vide sale deed dated 10.05.2006(Ex.P-1) land measuring 15 Kanals 6 Marlas was sold by Satya Rani (appellant-respondent No.1) and one Shri Suresh Kumar. The possession of the said land was also given. The said sale deed was entered in the mutations. When appellant-defendant No.1 proceeded to interfere in the possession, the present suit has been filed. On the basis of the evidence led by the parties and the pleadings, the decree was granted by the Civil Judge (Junior Division), Kaithal, on 28.02.2011,

against which the appeal preferred by the appellant-defendant No.1 was dismissed by the Additional District Judge, Kaithal, on 31.08.2013, resulting in the present appeal.

It is the contention of the counsel for the appellant-defendant No.1 that as per the sale deed dated 10.05.2006 (Ex.P-1), the possession of the land has not been handed over to the respondent-plaintiff, only share was sold. He further contends that during the proceedings, Santosh Lal, Kanoongo, was appointed as Local Commissioner, who appeared as DW-1, according to him, the possession was not shown of that of the respondent-plaintiff and therefore, the decree as has been passed cannot sustain. His further contention is that since the total share of the land of the appellant-defendant No.1 and that of Suresh Kumar was 19 Kanals and 10 Marlas, they still continued to be as co-owners of the remaining land which was not sold and therefore, the decree of permanent injunction could not have been passed against the co-owners/co-sharers and thus, the judgments passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the counsel for the appellant-defendant No.1 and with his assistance, have gone through the judgments passed by the Courts below.

It is not in dispute that as per the sale deed dated 10.05.2006 (Ex.P-1), 15 Kanals and 6 Marlas was sold, out of the total share of 19 Kanals and 10 Marlas, owned by the appellant-

defendant No.1 and Shri Suresh Kumar. The dispute primarily is with regard to the possession of the said property. As per the cross-examination of the appellant-defendant No.1, it has been admitted by her while appearing as DW-2 that at the time of entering into the said sale deed and on receiving an amount of ₹16,00,000/- as sale consideration for the 15 Kanals and 6 Marlas of land, possession being of theirs exclusively, the same was handed over to the vendee at the spot. Although, a plea has been taken with regard to the fraud having been committed but the said assertion has not been fortified with evidence which would dispel such a situation. Once an admission has specifically been made with regard to the handed over of the possession of land on which she alongwith Suresh Kumar were in exclusive possession, the possession of the respondent-plaintiff stood established. If that be so, the injunction as prayed could have been granted.

Counsel for the appellant-defendant No.1 has relied upon the report of the Local Commissioner, according to which, the possession of the land could not be established at the spot of that of the respondent-plaintiff, suffice it to say that the Courts below have rightly come to the conclusion that the same was not the scope of appointment of the Local Commissioner as he was not directed to determine the possession of the parties on the land. He was only assigned the responsibility to demarcate the same. Although, it has been stated that no partition of the suit land has taken place till date

but since the other co-sharers have not agitated the possession of the respondent-plaintiff, it can be said that they have no grouse in this regard which shows the exclusive possession of the respondent-plaintiff which he has acquired from the appellant-defendant. The evidence, primarily, the cross-examination of the appellant-defendant leaves no doubt with regard to the possession being handed over to the respondent-plaintiff.

Both the Courts below have returned concurrent findings after proper appreciation of evidence which do not call for interference as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 08, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**