

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

RSA No.4064 of 2015 (O&M).
Date of Decision: 14.12.2015.

Darshan Singh and anotherAppellants.

VERSUS

Mohinder Kaur and othersRespondents.

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. Vivek Rattan, Advocate for the appellants.

SNEH PRASHAR, J.

CM-9906-C-2015

There is a delay of 64 days in filing the appeal. In view of the grounds mentioned in the application, delay of 64 days in filing the appeal is condoned.

Application stands disposed of.

RSA-4064-2015

1. This was Regular Second Appeal filed by plaintiffs-appellants Darshan Singh and another (hereinafter referred to as the “appellants”)

impugning the judgment and decree dated 23.12.2013 passed in Civil Suit No.258 of 05.10.2010 by learned Civil Judge (Junior Division), Dhuri, dismissing the suit for permanent injunction filed by the appellants against respondents-defendants Mohinder Kaur and others (hereinafter referred to as the “respondents”), which was upheld by the first appellate Court vide judgment and decree dated 12.12.2014.

2. The relevant facts are recapitulated hereunder:-

In their suit for permanent injunction the appellants claimed to be co-owners with the respondents of the land measuring 31 bighas 13 biswas and to be in exclusive possession of the land measuring 21 bighas 6 biswas out of the same, situated at village Kaheru. They alleged that the respondents were openly threatening to interfere in their exclusive and peaceful cultivating possession and to dispossess them illegally and forcibly but they had no right to do so.

3. The respondents contested the suit. By filing written statement, they raised preliminary objections with regard to maintainability of the suit and cause of action etc. They submitted that a petition for partition of the suit land filed by them in respect of the entire properties jointly owned by the parties was pending before the revenue authorities and the instant suit had been filed by the appellants with an ulterior motive to delay the partition proceedings. They specifically denied the plea of being in exclusive possession raised by the appellants.

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

(1) Whether plaintiffs are entitled to permanent injunction as prayed for? OPP.

(2) Whether the suit of the plaintiffs is not maintainable? OPD.

(3) Relief.

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

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court dismissed the suit finding that the parties to the lis are co-owners/co-sharers and that partition proceedings between the parties are pending before the competent authority and further that a suit for injunction by a co-sharer against the other co-sharer is not maintainable.

7. Appellants preferred an appeal against the judgment and decree dated 23.12.2013 passed by learned trial Court which was dismissed by learned Additional District Judge, Sangrur vide judgment and decree dated 12.12.2014.

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

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

10. Learned counsel for the appellants argued with vehemence that when a co-owner is in exclusive possession of specific portion of the joint property, he has a right to continue in possession and his possession can be protected under law till the joint holding is partitioned. To support his

argument, learned counsel relied upon *Bhartu vs. Ram Sarup, 1981 P.L.J. 204.*

11. The facts of the instant case are distinguishable from the facts of the case relied upon by learned counsel for the appellants. The settled proposition of law is that a co-owner has interest in the whole property and also in every parcel of it. Possession of a joint property by one co-owner, is in the eyes of law, possession of all even if all but one are actually out of possession. Indeed, a co-sharer in exclusive possession on some portion of joint holding is entitled to continue in possession till joint holding is partitioned but as was laid down in *Bhartu's* case (supra), relied upon by learned counsel for the appellants, a co-sharer in possession exclusively of some portion of the joint holding is entitled to continue in possession if it is not more than his share till the joint holding is partitioned.

In the case in hand, the land jointly owned by the appellants and the respondents is 31 bighas 13 biswas out of which the appellants claim to be in exclusive possession of land measuring 21 bighas 6 biswas. It was neither their pleading nor any document could be produced by them to prove that they are co-sharers in the joint holding to that extent. Otherwise also, as held by learned trial Court as well as learned first appellate Court the Jamabandi Ex.P1 and the Khasra Girdawari Ex.P2 available on the record contradicts the stand of the appellants. It could not be denied by the appellants also that partition proceedings qua the joint holding are already pending before the competent authority. It appears that the instant suit was filed with a motive to delay the proceedings because it was observed by

learned first appellate Court that the appellants got the partition proceedings adjourned sine die on the pretext of pendency of the present suit. In any case, admittedly the parties to the suit are co-sharers in the joint holding and a suit for injunction by a co-sharer against other co-sharer is not maintainable. 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.

There appears no ground for intervention in the concurrent findings of learned trial Court and first appellate Court as there is no substantial question of law involved for decision in the case. The appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

14.12.2015

jitender