

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

RSA No.1485 of 2014(O & M)

Date of Decision: 08.01.2015

Baljit Singh

....appellant

Versus

Jaswinder Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Sandeep Arora, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was decreed by the trial Court vide judgement and decree dated 16.02.2013. Appeal preferred against the said decree failed and was dismissed on 12.11.2013. This is how, defendant No.1-Baljit Singh is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff Jaswinder Singh, he claimed a decree for permanent injunction restraining defendants No.1 and 2 from raising any construction and from changing nature of the suit land, illegally or forcibly and likewise, restraining defendants No.3 to 5 from raising any kind of construction and from changing the nature of the suit land, as the same had not yet been partitioned. It was averred that plaintiff happened to be co-sharer in

cultivating possession of the land in dispute. Defendants No.1 and 2 were said to have no right, title or interest in the suit property. Plaintiff, defendants No.3 to 5 and Makhan Singh and Gurmail Singh were co-sharers in the suit land and thus, the suit property was joint between them. The suit property was purported to be an agricultural land and crops were being sown. It was maintained that a day prior to the filing of the suit, defendants No. 1 and 2, threatened to raise construction over the suit property and tried to change its nature and character. Likewise, even defendants No.3 to 5 threatened to raise construction in the suit land. Thus, the suit.

In defence, it was pleaded, inter alia, on behalf of defendants No.1 and 2 that they were in physical possession of land on behalf of Makhan Singh and Gurmail Singh, who happened to be the brother-in-law of defendant No.1 Baljit Singh. It was claimed that Makhan Singh and Gurmail Singh had given power of attorney to their sister Charan Kaur, wife of defendant No.1 and mother of defendant No.2, and they were care taker of the interest of Makhan Singh and Gurmail Singh. It was claimed that Charan Kaur was in possession of the suit property as co-sharer. Further, as plaintiff had raised construction in the suit land, so even defendants No.1 and 2 have also constructed. As plaintiff had himself raised construction upon a portion of the suit property, he had no right to restrain the other co-sharers from doing so.

In a separate written statement filed by defendants No.3 to 5, it was pleaded, inter alia, that they had already raised a boundary wall over an area of about 01 kanal about three years ago,

the fact that was not mentioned in the plaint. However, the fact that the defendants happened to be the co-sharers/co-owners of the suit land, was admitted.

Trial Court, on an analysis of the matter in issue and the evidence on record, found that it was an admitted position on record that the land in dispute was still joint and was yet to be partitioned. Evidence on record showed that the partition proceedings were still pending before the revenue authorities. That being so, it was observed that raising of any construction in the suit land would certainly diminish its value and utility, till the same was finally partitioned between the parties. In reference to the testimony of Baljit Singh-DW1, it was observed that though he had conceded to have raised some construction on the suit land but the same was stopped on the institution of the suit. He also stated that defendants No.3 to 5 had also consented with him and he did not wish to make any further construction. That being so, it was concluded that the evidence on record proved that there indeed was a threat of a construction being raised in the suit property. Even Darshan Singh-DW4 also deposed that the defendants had no right to raise construction without first getting it partitioned. Record of rights i.e.Jamabandi for the year 2003-04 (Ex.P1), revealed that Sarwan Singh, Nirmal Singh, Jaswinder Singh son of Sital Singh, defendants No.3 to 5, were co-owners to the extent of 171/668 share. Plaintiff Jaswinder Singh was recorded to be a co-owner to the extent of 330/668 share and mutation No.1875 reflects the transfer of ownership of Mota Singh in favour of Makhan Singh and Gurmail

Singh sons of Mota Singh, on whose behalf defendants No.1 and 2 claimed to be in possession of the suit property. The said jamabandi, of course, shows that the suit land was still joint and all the co-owners were shown in cultivating possession thereof. That being so, it was observed that raising of construction over any portion of the suit land would certainly diminish the value and utility of joint khata. Accordingly, the suit was decreed and defendants were enjoined from raising any kind of construction and from changing the nature of the suit land, in any manner.

Being aggrieved against the said decree, defendants preferred an appeal. First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and, is thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, the suit property was jointly owned by plaintiff, defendants No.3 to 5 and Makhan Singh and Gurmail

Singh. And had not yet been partitioned. Injunction was claimed against defendants No.1 and 2 from raising any construction in the suit land and from changing its nature and character. And defendants No.1 and 2 indeed had no right, title or interest in the suit property. Thus, they lacked any right or authority to raise any construction over the suit property. Defendant No.1 Baljit Singh-DW1, testified in his statement that he had made some construction in the suit property but the same was stopped immediately on the institution of the suit. He further deposed that defendants No.3 to 5 had consented with him and he did not wish to make any further construction. Darshan Singh DW4 also deposed that all the defendants had no right to raise construction till the time the property was partitioned. Defendants No.3 to 5, who were co-sharers in the suit property, examined Nirmal Singh (DW5) defendant No.4. He also in his cross-examination testified that all the defendants do not want to raise any construction. That being so, defendants No.3 to 5, even being co-sharers, could not raise any construction so as to impair the value and utility of the suit property. And for altering its character. In any case, they are not before this Court.

Learned counsel for the appellant was unable to point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above and the conclusions that have concurrently been recorded by both the Courts below, there hardly exists any ground, least plausible in law to

interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

08.01.2015

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JUDGE**