

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5492 of 2015 (O&M)
Date of Decision : 13.10.2015

Jai Singh

....Appellant

Versus

Karan Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by Jai Singh-plaintiff against concurrent judgments of the Courts below whereby he was declined the relief of permanent injunction to restrain the defendants from raising construction over the land bearing *Killa* no. 52//18/1 (1-4), 23/2 (2-8), 24/1 (0-18), 64//4/1, 7/2 (1-13), situated in the revenue estate of village Panchi Jattan, *Tehsil Ganaur*, District Sonapat.

2. In later part of judgment parties to suit will be referred as plaintiff and defendant as per the civil suit.

3. Case of the plaintiff, in brief, is that parties to the suit alongwith others are co-sharer in the suit property which is joint and has not been partitioned till date. The plaintiff instituted an application for partition of suit property before the Court of *Tehsildar*, Ganaur, which is still pending. The defendants, who are strong headed persons, were threatening to raise construction over the suit property in a forcible and illegal manner.

4. The defendants contested the suit of plaintiff *inter alia*

pleading that the plaintiff himself has constructed one hall measuring 20 ft. x 16 ft. and one room measuring 18 ft. x 16 ft. over the suit property adjacent to the metalled road but has concealed this fact. The other co-sharers as well as defendants have also constructed their shops adjacent to the metalled road prior to filing of the present suit. The suit property, though, has not been legally partitioned but about 20/25 years ago, all the co-sharers orally partitioned the joint land and are enjoying their respective shares without any interference.

5. While dismissing the suit, Additional Civil Judge (Senior Division), Ganaur observed that the plaintiff has not denied that he himself has raised construction of a hall and a room over the suit property which he has not disclosed. Ist Appellate Court while dismissing the appeal of plaintiff observed that the plaintiff is not entitled to the relief of injunction against the defendants who are co-sharers in the suit land. Secondly, raising of construction or improvement over the common property does not amount to ouster. The plaintiff in his cross-examination had admitted that entire suit property is adjacent to main road and the same was orally partitioned by forefathers of parties and since then the partes are in possession of their respective shares. Both the Courts below have observed that the plaintiff has concealed material facts, as such, is not entitled to discretionary relief of injunction.

6. Learned counsel for the appellant has argued that partition proceedings of the suit land are pending before the revenue authorities. The defendants are misusing their

possession over the part of joint land and are intending to raise construction over the land, which has road on two sides. That land is more valuable than the other land and the defendants have no right to usurp the valuable chunk of land without partition.

7. As is evident from the evidence on record, as discussed by the Courts below, suit land, though, is recorded as jointly owned by the parties but co-sharers have separated their shares long back during the life time of their forefathers. The parties have also raised construction over the land in their possession. The plaintiff himself has raised construction of a hall and a room over the land on the main road in his possession. If the plaintiff himself can raise construction, he has no *locus standi* to seek the relief of injunction to restrain the other legal heirs from raising construction over the land in their possession.

8. On perusal of the paper-book and judgments of both the Courts below, I find no legal or factual infirmity therein calling for interference. No question of law, what to talk of substantial question of law requiring determination, arises in this appeal, which has no merit.

Dismissed.

October 13, 2015
jk

(SURINDER GUPTA)
JUDGE