

RSA No.3442 of 2014

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

RSA No.3442 of 2014

Date of Decision: September 07, 2015

Pargat Singh & antoher

...Appellants

Versus

Baljit Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ramandeep, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Jalandhar, on 08.11.2011, dismissing the suit of the appellant-plaintiff for permanent injunction restraining the respondent-defendants from interfering in the peaceful possession, taking forcible possession and dispossessing them from the property as has been detailed in the heading of the suit, on the ground that appellant-plaintiffs have not been able to prove that they are in exclusive possession over the suit property, which judgment has been upheld by the Additional District Judge, Jalandhar, on 03.02.2014.

It is the contention of the counsel for the appellant-plaintiffs that the appellant-plaintiffs are exclusive owners in possession over the suit property. In support of this contention, he

places reliance upon the cross-examination of Lakhwinder Singh (DW-1) and Didar Singh (DW-2) who have admitted that there was partition of the property. He, therefore, contends that the findings recorded by the Courts below cannot sustain and when the appellant-plaintiffs were found in exclusive possession over the property in question, the suit should have been decreed as prayed for. The judgments passed by the Courts below deserve to be set aside and the appeal be allowed.

I have considered the submissions made by the counsel for the appellant-plaintiffs and have gone through the judgments passed by the Courts below.

The Courts below have proceeded to decide the case by asserting that the relief of injunction is a discretionary relief for which the parties approaching the Court must come with the clean hands. The true/detailed facts have not been disclosed by the appellant-plaintiffs, details whereof have been mentioned in the judgments passed by the Courts below. Perusal of the same shows that the property is not in the exclusive possession of the appellant-plaintiffs but it is a joint property. There has not been partition of the said property. The alleged partition is of the year 1988 but there is no reflection thereof in the revenue records. Merely because two witnesses have admitted about there being a partition would not be enough specially when it is not specified about the mode of the partition which may have the effect of specified areas of land being

made available to the joint owners. Even in the sale-deed which was executed by the appellant-plaintiffs to one Shri Malkiat Singh vide sale-deed dated 25.08.1998 (Ex.D-C) does not specify the boundaries of the land but only his share has been sold and similarly, when the same was bought back by him through sale-deed dated 21.03.2001 (Ex.P-1), the said property is again returned to him as a share in the property owned without any specific boundaries. It, therefore, cannot be said that the appellant-plaintiffs were in exclusive possession of the property in question. It is not in dispute that all co-sharers are deemed to be in possession over every inch of the joint land unless the same is partitioned and no injunction can be granted in favour of one co-sharer against the other unless he has shown his exclusive possession over the suit property. The appellant-plaintiff having failed to do so, the Courts below have rightly rejected the claim as has been made in the suit.

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.

(AUGUSTINE GEORGE MASIH)
JUDGE

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