

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

**Regular Second Appeal No.5562 of 2014 (O&M)
Date of decision: 27.03.2015**

Baltej Singh and others

.....Appellants

Versus

Tej Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anupam Singla, Advocate,
for the appellants.

Mr. P.K.S. Phoolka, Advocate,
for the respondents.

Ritu Bahri, J.

Plaintiff-appellants have come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Senior Division), Bathinda and the Additional District Judge (FTC), Bathinda, whereby their suit has been dismissed.

Plaintiff-appellants had filed a suit for permanent injunction restraining the defendants-respondents from illegally and forcibly raising any construction on any portion of land measuring 5 Marlas, shown as *gair mumkin ruri* in the Jamabandi comprised in Khewat Khatauni No.505/1139, Khasra Nos.84//6/7/2 (0-2), 7/2/2 (0-3), situated within the revenue limits of village Ghuda. It is a joint property of the plaintiffs and defendants and has not been partitioned.

As per the written statement filed by defendant No.1, he claimed

himself to be owner in possession of a house, which was constructed in the suit land for the last 34 years. It was stated that earlier the suit land was joint, but after its partition, defendant No.1 was residing there after constructing his house.

From the pleadings of the parties, following issues were framed by the trial Court on 13.08.2008:-

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in its present form? OPD
3. Whether the suit of the plaintiffs is bad for mis-joinder of parties? OPD
4. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD
5. Whether the plaintiffs and defendant No.1 are co-sharers in the suit land? OPD
6. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the suit by recording a finding that as per the report (Ex.PW7/A) given by local commissioner Balwinder Singh, Kanungo (DW-7), the house constructed on the suit land was 34 to 35 years old. This fact further finds support from the electricity bills, which were proved by Jagsir Singh (DW-6). Local commissioner Balwinder Singh, Kanungo (DW-7) in his report, Ex.PW7/A, had specifically stated that in Khasra No.84/6/7/2 (0-2), 7/2/2 (0-3), measuring 5 Marlas, Babu Singh had constructed his house, where he was residing with his family. Plaintiffs did not file any objections against the

report of local commissioner. Babu Singh was staying in the house, which was constructed over the suit land. He being son of Karnail Singh was co-sharer in the suit land and being a co-sharer in possession of part of the joint land, he could retain his possession.

The lower appellate Court affirmed the findings recorded by the trial Court. In para 16 of the judgment, the lower appellate Court has observed that plaintiffs, in their cross-examination, had admitted the construction of house of the defendant in the property in dispute. As per the site plans produced by the plaintiffs and the witnesses of the defendants, there were identical properties on the sides of the land in dispute. There was house of Babu Singh in the property in dispute. Even the witnesses of the plaintiffs have also admitted that there were two rooms, one cattle shed, a toka machine and a boundary wall around the said plot. Further, Babu Singh was having his vote in house No.509, which was constructed on the dispute land. In the revenue record, the property was shown as joint ownership of all the co-sharers. Although, there was no evidence with regard to partition of the property, yet the plaintiffs could not seek injunction against the defendants restraining them from raising any construction.

Vide order dated 19.03.2015 passed by this Court, learned counsel for the appellants had sought time to get instructions regarding appointment of fresh local commissioner. Today, learned counsel for the appellants states that he has not received any instruction in this regard.

After going through the impugned judgments, there is no dispute with regard to the concurrent findings of fact that the house of defendant-respondent(s) is existing over the land in dispute for the last 34/35 years.

Therefore, both the Courts below have rightly dismissed the suit of the

plaintiff-appellants

No substantial question of law arises for consideration.

Dismissed.

27.03.2015

ajp

(RITU BAHRI)
JUDGE