

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

**RSA No.6097 of 2014 (O&M)
Date of decision: 07.07.2015**

Heera and others

...Appellants

versus

Abdul Majeed (now deceased) through LRs and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohammad Arshad, Advocate,
for the appellants.

RITU BAHRI, J.

Defendants-appellants have come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Additional Civil Judge (Senior Division), Hathin and the Additional District Judge, Palwal, whereby suit filed by the plaintiffs-respondents has been decreed.

Plaintiff-respondents filed a suit for permanent injunction against the defendant-appellants stating therein that they were owners in possession of the suit property measuring 6 Kanals 2 Marlas to the extent of 2/3rd share situated at village Chhainsa, Tehsil Hathin, Palwal. The defendants-appellants were co-owners in possession of the suit land to the extent of 1/3rd share. They (defendants) were in exclusive possession of plot bearing khasra Nos.675 and 676 and they had raised construction over the same. The plaintiffs-respondents had constructed boundary wall over plot Nos.547 and 548, whereas plot Nos.677 and 678 were lying vacant. These plots fell in the share of the plaintiffs and they are using them as their *gitwar*.

The suit property had not been partitioned by metes and bounds. As per the plaintiffs, the defendants-appellants wanted to raise construction over plot Nos.677 and 678, which were being used by the plaintiffs.

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiffs-respondents. It was pleaded that defendants were exclusive owners in possession of Khasra Nos.675 to 678 and they had raised construction over the same. It was denied that plot Nos.677 and 678 were lying vacant.

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

1. Whether the plaintiffs are co-owners in possession over the land in dispute to the extent of 2/3rd share as alleged? OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether plaintiffs have got no locus-standi and cause of action to file the present suit? OPD
5. Whether the plaintiffs are estopped by their acts, conduct and record from filing the present suit? OPD
6. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit of the plaintiffs-respondents. The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal. Hence, this appeal.

The suit of the plaintiffs-respondents was that plot Nos.677 and

678 were in their exclusive possession. In their cross-examination before the trial Court, Heera (DW-1) and Ajmat (DW-2) had admitted that plot Nos.677 and 678 were in possession of the plaintiffs-respondents. It was also admitted that plot No.678 was lying vacant. However, the defendants-appellants, in their written statement had pleaded that they had raised construction over the said plot. The plaintiffs-respondents had placed on record copy of Jamabandi for the year 1994-95 (Ex.P1), which revealed that the parties to the suit were joint owners in possession over the suit property. No evidence was led by the defendants-appellants to prove the nature of their possession as per document, Ex.D1.

The suit of the plaintiffs-respondents had been rightly decreed by both the Courts below Keeping in view the judgment passed by this Court in **Gurjit Vs. Surjit**, 1989 PLJ 55, wherein it has been held that co-sharer can protect his exclusive possession from being interfered by other co-sharers till the partition of the suit property. Both the Courts have returned concurrent finding of facts that the plaintiffs-respondents were in exclusive possession over the plot(s) in question.

After going through the impugned judgments, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

07.07.2015
ajp