

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

RSA No.6366 of 2014 (O&M)

Date of Decision: November 20, 2015

Rattan Singh and others

.... Appellants

vs.

Boota Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Chauhan, Advocate for the appellants.

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

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 27.08.2014 passed by learned Addl. District Judge, SAS Nagar (Mohali), affirming the judgment and decree dated 03.01.2011 passed by learned Civil Judge (Jr. Divn.), Kharar, vide which the suit of the plaintiff for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs and dispossessing the plaintiffs forcibly and illegally from the suit land except in due course of law.

The plaintiffs claimed that they purchased the specific portion from Sucha Singh, vide sale deed dated 06.11.2006 vide vasika No.2076. The suit property is a part of joint big chunk of land, which was shared by several khewatdars of village Karoran, Tehsil

Kharar and District S.A.S. Nagar, Mohali. The possession of the co-sharers were separately shown in 560 kitas in khasra girdawari.

The defendants had claimed that suit property is joint and had not been partitioned. Therefore, the plaintiffs are not entitled to the injunction as prayed for.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

It comes out that when defendant No.1 (appellant herein) was cross-examined, he had specifically admitted the exclusive possession of the plaintiff on the suit property. He stated that he has no concern with the suit property, so, there is no question of uprooting the 'Budd' (boundary line). He further stated that there is no land adjoining the suit property. He also admitted that he neither started uprooting 'Budd' nor he will do so in future. He claimed that the counsel did not tell him that the khasra girdawaries are also in the name of the plaintiffs, the copy of which is Ex.P5. He further admitted that the plaintiffs had affixed barbed wire in their fields and he will not dispossess the plaintiffs from the suit property.

Learned counsel for the appellants has relied upon the authorities of Hon'ble the Supreme Court delivered in ***“Ramdas vs Sitabai and others”*, 2009(7) SCC 444** and ***“Sidheshwar Mukherjee vs Bhubneshwar Prasad Narain Singh and others”*, 1953 AIR (SC) 487.**

It has been argued that the remedy is to seek partition and no injunction can be granted against the co-sharers.

However, it comes out that defendant No.1-Rattan Singh himself admitted the exclusive possession of the plaintiff and he undertook not to dispossess the plaintiffs. Once, the co-sharer is in exclusive possession of a particular portion, he cannot be dispossessed except in due course of law by seeking remedy of partition.

As such, there is no illegality or infirmity in the findings recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

November 20, 2015
sarita

(KULDIP SINGH)
JUDGE