

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.943 of 2014 (O & M)

Date of Decision: *September 24, 2015*

Manjit Singh & others

..... APPELLANTS

VERSUS

Jasbir Kaur @ Mohinder Kaur & another

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers 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?

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PRESENT: - Mr. L.S. Sidhu, Advocate, for the appellants.

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Jaspal Singh, J

1. The instant appeal has been preferred by the plaintiffs against judgment & decree dated November 25, 2013 passed by the first appellate court whereby judgment & decree dated April 8, 2013 rendered by the trial court have been upheld and findings affirmed.

2. Briefly stated, plaintiffs – appellants filed a suit for permanent injunction restraining the defendants from

interfering in any manner in their lawful possession over the land measuring 8 kanals 15 marlas comprised of Khewat No.12, Khatauni No.27, Rect. No.40, Killa No.10/1 (4-4), Rect. No.42, Killa No.23 (4-11) situated at village Bhangar, District Ferozepur. Father of plaintiffs, namely, Gurbachan Singh was owner of suit land. After his death, plaintiffs and their mother Jangir Kaur stepped into the shoes of Gurbachan Singh and to this effect, a mutation No.2226 of village Bhangar was sanctioned in their name. After the death of Jangir Kaur, plaintiffs came into possession of the suit land and their names are incorporated in the revenue record. Plaintiffs pleaded that defendants have no concern with the suit land but are trying to dispossess them forcibly and illegally from the same.

3. In response to the notice of suit issued to the defendants, they contested the suit by filing joint written statement. They pleaded that after the death of Waryam Singh (father of defendant No.1), suit land was inherited by Jangir Kaur (mother of defendant No.1) and after her death, land was inherited by Gurbachan Singh and defendant No.1, vide mutation No.3933. After the death of Gurbachan Singh, his share was inherited by plaintiffs vide mutation No.3934 but the share in the land of defendant No.1 remained under her

possession. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are in possession of the suit land? OPP
2. Whether plaintiffs are entitled to relief of permanent injunction as prayed for? OPP
3. Relief.
4. Plaintiffs led their evidence in support of their claim. Defendants failed to produce any evidence and the same was closed by order. After hearing learned counsel for the parties and appraising the evidence, oral as well as documentary, suit filed by the plaintiffs was dismissed with costs by the trial court vide judgment & decree dated April 8, 2013.
5. Aggrieved against the judgment & decree, above referred, plaintiffs preferred an appeal against the aforesaid judgment & decree but the same was also dismissed by the lower appellate court vide judgment & decree dated November 25, 2013.
6. Through the present regular second appeal, the plaintiffs – appellants have challenged impugned judgments and decrees rendered by the courts below.

7. While assailing the impugned judgments & decrees passed by the courts below, it has been argued with vehemence by learned counsel for the appellants that the same are absolutely against the record available on file and settled canons of law. Infact, both the courts below have misappreciated the legal proposition and the evidence available on file. It is an undisputed fact that the suit land was originally owned by Waryam Singh (grand-father of appellants). After his unfortunate demise, the property in question was inherited by Jangir Kaur (mother of respondent – defendant No.1). When she breathed her last, the land in question which was owned and possessed by her, inherited by Gurbachan Singh and respondent – defendant No.1. Mutation No.3933 was incorporated and sanctioned in this regard. Gurbachan Singh also left for heavenly abode and it was succeeded by the plaintiffs. Thus, on the basis of inheritance of Gurbachan Singh, regarding which, mutation No.3934 was sanctioned, came in possession of the appellants – plaintiffs, being his sons, whereas, the share of defendant No.1 remained under her possession. It is well settled proposition of law that a co-sharer in exclusive possession of the property, jointly owned by him and other co-sharers is entitled to injunction till the same is partitioned. There is oral as

well as documentary evidence in the shape of the testimony of PWs examined by the appellants – plaintiffs in this regard. It has been brushed aside by both the courts below without assigning any cogent reason. Since the appellants are in possession of property in suit, they are entitled to an injunction restraining the other co-sharers to safeguard their possession.

8. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant and have also perused the judgments delivered by both the courts below.

9. Undoubtedly, the land in suit was owned by Waryam Singh which was inherited by Jangir Kaur, being his daughter, on his demise, and when Jangir Kaur was taken away by nature, the property owned and possessed by her, was inherited by Gurbachan Singh and Jasbir Kaur (defendant – respondent No.1). The only controversy involved in the instant appeal is whether a co-sharer is entitled to seek injunction against other co-sharers from a joint holding?

10. Here, it would be pertinent to mention that the revenue record did not reveal that the appellants – plaintiffs are/were in possession of the property in suit, that too, to the extent of their shares. Rather, all the co-sharers have been

depicted to be in joint possession of the property in question.

The inter-se rights and liabilities of the co-sharers were settled by the Division Bench of this Court in case Sant Ram Nagina Ram v. Daya Ram Nagina Ram, *A.I.R. 1961 Pb. 528* wherein the following propositions were laid down:-

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

11. The aforesaid judgment has been approved by the Full Bench of this Court in case Bharthu versus Ram Sarup, 1981 PLJ 204, which still holds the field.

12. A glance at the aforesaid proposition of law culled out in the aforesaid case, every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights to other co-owners, and further that, every co-owner is treated to be in each and every inch of the joint property. Even similar occupation of larger portion or entire joint property is deemed to be on behalf of all.

13. Adverting to the facts of the case in hand, it can be said that a co-sharer in exclusive possession of some portion of the joint holding, not more than his share, is entitled to continue its possession till the joint holding is partitioned. But, in the case in hand, there is nothing on the record to suggest that the appellants – plaintiffs are in exclusive possession of the disputed property. Moreover, the appellants being co-owners of the property in suit have got no locus-standi to seek an injunction against the other co-sharers/co-owners and the remedy lies with them is only to seek partition of the property in dispute.

14. Taking into consideration the aforesaid aspects, this Court does not find any merit in the instant appeal. It can be safely concluded that there is no substantial question involved in this appeal so as to proceed with it. Accordingly, the appeal is dismissed.

September 24, 2015

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(Jaspal Singh)
Judge