

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

RSA No.1657 of 1986 (O&M)

Date of decision : 06.04.2016

Gurdev Singh

...Appellant

Versus

Sohan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ranjit Saini, Advocate for the appellant.

Mr. Harkesh Manuja, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree of the lower appellate Court, whereby suit at the instance of the respondent-plaintiff seeking injunction to the effect that the defendant be restrained from interfering or ejecting him from possession of the land measuring 35 kanals 4 marlas forcibly in possession of him bearing khewat No.214, 215, 213, Khatauni No.395, 399, 394, Rect. No.12 Killa No.61, 5/2, 7, Rect. No.7 Killa No.24 min, 25 min, Rect. No.12, Killa No.4, 5/1 as entered in jamabandi for the year 1982-83 situate in the area of village Malpur, except in due course of law, has been decreed.

Mr. Saini, learned counsel appearing on behalf of appellant-defendant submits that as per the pleadings of the parties, defendant admitted the possession of the plaintiff qua 11 kanals 5 marlas. Otherwise both parties to the lis are co-sharers and, therefore, injunction could not be confined to the aforementioned land claiming exclusive possession. Otherwise, suit for permanent injunction qua the co-sharers in the absence of exclusive possession, is not maintainable. In support of his contention, he has relied upon full bench & Division Bench judgment of this Court in *Bhartu Vs. Ram Sarup, 1981 PLJ 204, Bachan Singh Vs. Swaran Singh, 2000(3) RCR (Civil) 70 D.B.* and thus urges this Court to formulate following substantial questions of law as there is illegality and perversity in the judgment and decree of the lower Appellate Court:-

- i) Whether the simplicitor suit for injunction, in the absence of the exclusive possession of the entire land, is maintainable?
- ii) Whether judgment and decree of the lower Appellate Court granting decree vis-a-vis 35 kanals 4 marlas is maintainable when the plaintiff is exclusive possession 11 kanals 5 marla?

Mr. Harkesh Manuja, learned counsel appearing on behalf of respondent-plaintiff submits that jamabandi Ex.P1 for the year 1982-83 though describes the area of 20 kanals 3 marlas, but khasra girdwari Ex.P2 for the year 1983-84 described the exclusive possession of the plaintiff to the extent of 35 kanals 4 marlas and remedy if any for the appellant was to seek partition as respondent-plaintiff is in exclusive possession. Judgment Ex.D1 relied upon by the trial Court has been set aside by the lower Appellate Court and Regular Second Appeal filed, has been dismissed in

default. Even the jamabandi placed on record shows the subsequent possession which has been sought to be placed on record under Order 41 Rule 27 and thus urges that no substantial question of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and of the view that once the co-sharer is able to prove the exclusive possession is entitled to injunction as per the principle carved out in Bhartu Ram's case. Khasra Girdawri shows the actual possession. Thus, the lower Appellate Court has rightly granted the injunction in the manner as has been mentioned above. In case appellant-defendant does not want to keep the property joint, much less, is aggrieved of the joint-ness then he shall be at liberty to seek remedy by seeking partition but cannot forcibly dispossess and interfere into possession of the respondent-plaintiff.

In view of what has been mentioned above, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court.

Substantial questions of law as noticed above are answered in favour of respondent-plaintiff and against the appellant-defendant.

Appeal stands dismissed.

CM No.12392-C of 2015

Present application is dismissed as withdrawn. Otherwise this Court had already taken into consideration Ex.P1 and Ex.P2 jamabandi for the year 1982-83 and Khasra Gidawari for the year 1983-84.

06.04.2016

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**(AMIT RAWAL)
JUDGE**