

316-1

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

RSA-247-1988

Date of decision : 18.05.2016

Joginder Singh

... Appellant

Versus

Bandra Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit claiming injunction against the respondent from interfering in the peaceful possession or raising any kind of construction in the land measuring 3 ¼ marlas (towards southern side) out of the land measuring 18 marlas compromised in khewat No.74, khatauni No.140/- Khasra No.67/6 (0-18), entered in jamabandi 1983-84 situated in the area of Village Halluwal, by force, or therewise than in due course of law.

The case set up by the appellant-plaintiff is that the aforementioned land was previously owned and possessed by Mehnga Singh son of Dewan Singh resident of Village Halluwal, who sold the land to the plaintiff vide registered sale deed dated 14.09.1980 and handed over the possession. It is only, thereafter the defendants started threatening and the suit

was filed. In support of the aforementioned case, he placed on the record the sale deed (Ex.P-1). As per the defence of the defendants, it was pleaded that the plaintiff had not attached the correct site plan of khasra No.67/6 and the construction existing thereon, whereas the plaintiff had already constructed his house as shown in blue in letter NOGH in the site plan Annexed to the written statement as Ex.D-1, in the area of 3 ¼ marals in khasra No.67/7 and therefore, he cannot seek the injunction. The plaintiff is the owner of the 13/72 share out of 18 marlas. The respondents-defendants were further stated that the appellant-plaintiff has not approached the Court with clean hands and the suit was liable dismissed for want of non-joinder of Jaswant Singh, Avtar Singh sons of Didar Singh and Harcharan Singh Son of Nagina, being the co-sharers in khasra No.67/6.

The Courts below on the basis of the oral and documentary evidence declined the claim, even the appeal also met with the same fate. The present appeal stands admitted and there is no interim order. In my view, the relief sought in the plaint has become infructuous as the suit was filed in the year 1985 and we are in 2016. Even an application for injunction was filed which was declined on account of *doctrine akin to lis pendens*.

It is a matter of record that the mutation (Ex.D-3) was sanctioned on 15.10.1970 and the plaintiff was held to be owner of only 13 shares out of this land, whereas the contention was raised before the Assistant Collector with regard to the some partition, but the same was not admitted by the Assistant Collector, even before the trial Court, no documentary evidence has been placed on record. No document, much less, revenue record has been placed on record to show that the partition was effected between the parties and as per

the jamabandi, the land is agricultural and until and unless the fact regarding private partition is mentioned in the revenue record, the co sharers remained joint owner of the khata. The appellant-plaintiff admitted that he constructed his house towards northern side of 18 marals about 20 years back, but no mutation of the land $3\frac{1}{4}$ marals share has been produced, thus, the plaintiff is held to be owner of the $6\frac{1}{2}$ marals out of 18 marals, whereas as per the jamabandi, he is the owner of the $3\frac{1}{4}$ marals. It has not been proved that the appellant-plaintiff is in possession $3\frac{1}{4}$ marals towards the southern side, though he shown to be the owner to the extent $3\frac{1}{4}$ marals out of 18 marals, thus, the appellant-plaintiff has miserably failed to prove that the he is owner in possession of the suit property and therefore, he could not seek the injunction.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed.

18.05.2016
yogesh

(AMIT RAWAL)
JUDGE