

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

RSA No. 2935 of 2005(O&M)

Decided on: 20.01.2016.

Rattan Singh and another

... Appellants

Versus

Chanan Singh and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. O.P. Hoshiarpuri, Advocate,
for the appellants.

None for the respondents.

JITENDRA CHAUHAN.J.

This regular second appeal has been filed by the defendants against the judgment and decree dated 05.04.2005, passed by the Additional District Judge, Gurdaspur vide which the appeal filed by the defendants was dismissed and the judgment and decree dated 03.12.2001, passed by the Civil Judge (Junior Division) Gurdaspur was upheld.

The brief facts of the case as noticed in the judgment passed by the trial Court are as under :-

“The plaintiff filed this suit alleging therein that plaintiff and defendants are co-owners of the property in dispute. It is alleged that property in dispute has not been partitioned so far. It is

alleged there is a water course in the common land for the purpose of irrigation of the land of the parties. It is alleged that the defendants are head strong persons and are threatening to demolish the water course and also are threatening to raise construction in the joint land to which the defendants have no right to do so. It is alleged that the defendants were requested many times not to demolish the water course and were also requested not to raise construction but they refused and as such the present suit is filed. Cause of action accrued to the plaintiff a week back when the defendants finally refused to admit lawful claim of the plaintiff. The property in dispute is situated in village Jiwanwal which falls in Distt. Gurdaspur and as such this Court at Gurdaspur has got the territorial jurisdiction to entertain and try this suit. The value of the suit for the purposes of court fee and jurisdiction is assessed as Rs. 130/- and the requisite court fee is affixed. A decree for permanent injunction is prayed for.

On notice the defendants appeared and filed

written statement taking preliminary objection that the suit is not maintainable. On merits existence of water course is admitted. It is also admitted that the property in dispute is the joint ownership of the parties. All other allegations are denied being wrong. A prayer for dismissal of the suit is made.

In replication, the allegations made in the plaint are reiterated and those of the written statement are denied being wrong

From the pleadings of the parties following issues were framed :-

(i) Whether the suit of the plaintiff is not maintainable?

(ii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(iii) Relief ? ”

The trial Court vide judgment and decree dated 03.12.2001, partly decreed the suit of the plaintiff and restrained the defendants from demolishing the water course and raising construction in the suit property. However, the suit of the plaintiff for restraining the defendants from alienating the suit land was dismissed. The trial Court returned the finding that no doubt, the defendants had denied the

allegations made in the plaint but when the apprehension of the plaintiff was there, certainly the plaintiff was entitled to injunction. The decree of permanent injunction restraining the defendants from alienating the suit property was declined on the ground that if sale took place, the same would be subject to the partition. The subsequent purchasers would step into the shoes of the co-owners.

The appeal filed theragainst by the defendants No. 1 and 2 was dismissed by the learned Additional District Judge, Gurdaspur vide the judgment and decree dated 05.04.2005 upholding the findings recorded by the trial Court.

Feeling dissatisfied, the defendants No. 1 and 2 have preferred the present regular second appeal.

The learned counsel for the appellants refers to the judgment dated 08.12.2009, passed by a coordinate bench of this Court in RSA No. 1487 of 1996. He further states that the property in the hands of predecessor-in-interest of the appellants i.e. Sham Singh @ Shama was held to be self-acquired property. In these circumstances, the injunction issued against the appellants has resulted into miscarriage of justice as the appellants are the successors-in-interest of Sham Singh @ Shama. It is further contended that the substantial question of law arising in the present appeal is whether injunction can be granted against the co-owner who is in exclusive possession of the joint property.

The operative part of the judgment passed in RSA

No. 1487 of 1996 is reproduced as under :-

“Since the property in the hands of Sham Singh @Shama was his self acquired property, he could alienate the same by way of executing sale deeds. The appellants are the nephews of Sham Singh @ Shama and had no pre-existing rights in the share of Sham Singh @ Shama. In these circumstance, the learned Additional District Judge rightly held that the plaintiff was the co-owner in the joint possession to the extent of 1/12th share in the suit land.”

Once the property in the hands of Sham Singh @ Shama was held to be self-acquired property and he was held competent to alienate the same by way of executing sale deeds, the appellants, who are the successors-in-interest, became owners of that property as they had purchased it from him. Therefore, they have stepped into the shoes of Sham Singh and whatever rights vested in him, the same are carried forward by the appellants. The title of Sham Singh has been determined in the earlier round of litigation. The question arising for the consideration of this Court is, whether, in these circumstances, injunction can be issued against the appellants who are none else but the owners in possession of the property. The answer to the question is in the negative because in the earlier litigation, the plaintiff, Chanan Singh has been held to be the owner in joint possession of land to the extent of 1/12th share, whereas, Sham Singh

has been held to be the owner in possession to the extent of 1/6th share. Certainly, the plaintiff Chanan Singh has no right or interest in the 1/6th share held by Sham Singh which has been subsequently purchased by the present appellants. Therefore, the plaintiff, Chanan Singh has no right to seek injunction against the present appellants. Consequently, the present appeal is allowed and the impugned judgments and decrees passed by both the Courts below are set aside.

The suit of the plaintiff is dismissed.

20.1.2016
SN

(JITENDRA CHAUHAN)
JUDGE