

Regular Second Appeal No.1064 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1064 of 2011 (O&M)

Date of Decision: July 29, 2016

Amarjit Kaur & another

...Appellants

Versus

Balwant Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sanjiv Gupta, Advocate,
for the appellants.

Mr.S.S.Salar, Advocate,
for the respondents.

AMIT RAWAL, J.

Appellant-defendant Nos.2 and 3 are aggrieved of the findings rendered by the trial Court against them and upheld by the Lower Appellate Court, whereby they have been restrained from interfering into the peaceful possession of the plaintiff and his brothers, much less from dispossessing them from the following land:-

“Khewat No.34, Khatauni No.68/1, Khasra No.100//5 (6-16), Khatauni No.69, Khasra No.50//25/2 (2-0), 59//5 (8-0), 6/1 (2-4), 100//19/1 (4-0), Khatauni No.70, Khasra Nos.100//18 (7-9), 23 (8-0), 24 (8-0), 25 (7-8), 109//2 (8-0), 3(8-0), 4(8-0), 5/1 (5-12), 7 (8-0), 8(8-0), 49//21/2 (2-0), 22/2 (0-15), 60//1 (8-0), Khatauni No.73, Khasra

Nos.100//19/2 (4-0), 22 (8-0), Khatauni No.75, Khasra Nos.100/4 (5-19), situated at Village Kakrala, Tehsil Nabha as per jamabandi for the year 1999-2000.”

Mr.Sanjiv Gupta, learned counsel for the appellant-defendants submits that it is the conceded position on record that the respondent-plaintiff along his brothers, namely, Gurdev Singh, Baldev Singh and Baghail Singh were the co-sharer and, therefore, injunction sought against the co-sharer was not maintainable. The entire emphasis of the trial Court and the Lower Appellate Court was on khasra No.100//5 (6-16) and not on other khasra numbers, whereas the injunction was in respect of entire khasra number. As per jamabandi for the year 1999-2000, against khasra No.100//5 (6-16), Khewat No.34, Paramjit Kaur is shown to be owner and, therefore, remedy if any for the respondent-plaintiff was to file a suit for partition and not for injunction. In support of his contention, has relied upon the ratio decidendi culled out by the Full Bench of this Court in **Bhartu Versus Ram Sarup, 1981 PLJ 204** and Division Bench in **Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70**. He submits that under the garb of the aforementioned order, the respondent-plaintiff is bent upon to change the nature of the suit land and alienate the same and it will create multiplicity of the litigation and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr.S.S.Salar, learned counsel for respondent No.1- plaintiff submits that as per the evidence brought on record, the respondent-plaintiff has been found to be in exclusive possession of the property and, therefore, as per the exception carved out in **Bhartu's case (supra)**, the co-sharer/owner, who is in exclusive possession of the property, can always seek the injunction and, therefore, no substantial question of law arises for determination by this Court. Both the Courts, being the Courts of fact and law, after examining the jamabandi, khasra girdawari and revenue record threadbare, have found the exclusive possession, thus, prays for affirming the judgments and decrees under challenge and dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submission of Mr.Gupta, for, the jamabandi for the year 1999-2000 showing the possession of Paramjit Kaur vis-a-vis Khasra No.100//5 (6-16), has been corrected by the revenue Court in the order passed in her presence and that order has attained finality, in essence the respondent-plaintiff has been found to be in exclusive possession of the joint khata and, therefore, rightly so, the Courts below have, by taking into consideration the settled law, enjoined the defendants from forcibly dispossessing the plaintiff and interfering. The appellant-defendants, in

my view, would have a right to seek partition of the property either by joint or separate proceedings, but cannot contest the objection of the co-sharers, who have been found in exclusive possession.

I am of the view that there is merit in the submission of Mr.Gupta that under the garb of injunction order, the respondents cannot change the nature of the land. In view of the provisions culled out in Bhartu's case (supra) and upheld in Bachan Singh's case (supra), till the party seeks partition, injunction is to be passed. In my view, the defendants should be restrained from changing the nature and alienating the land.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the Courts below. No case for interference is made out, much less no substantial question of law arises for determination. The findings of the trial Court and upheld by the Lower Appellate Court are affirmed.

Appeal stands dismissed.

July 29, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No