

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

**RSA No.1381 of 2011 (O&M)
Date of Decision :17.11.2016**

Jagroop SinghAppellant

Versus

Sarla Devi and OthersRespondents

**ESA No.48 of 2013(O&M)
Date of Decision :17.11.2016**

Gurmeet SinghAppellant

Versus

Sarla Devi and OthersRespondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Amit Jain, Advocate for the appellant(RSA No.1381 of 2011)

Mr. Arihant Jain, Advocate and
Mr. Rishav Jain, Advocate for the appellant (ESA No.48 of 2013)

Mr. S.S.Rangi, Advocate with
Mr. Sahil Arora, Advocate for respondents No.1 to 3.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two cases i.e. RSA bearing No. 1381 of 2011 titled as Jagroop Singh vs. Sarla Devi and Others and ESA No. 48 of 2013, stated to have been filed by third party i.e. Gurmeet Singh represented by Mr. Arihant Jain, Advocate in this Court.

Mr. Amit Jain, learned counsel appearing on behalf of defendant(s) in Civil Suit No. 379 of 2005 titled as Sarla Devi and Others Vs. Jagroop Singh and Others, submits, that the suit of the respondents-plaintiffs for possession and permanent injunction has erroneously and perversely been decreed by the trial Court. In fact, the property bearing Khasra No. 250/22 is a big chunk of land measuring 4 bigha and 16 biswas

whereas the corrected sale deed dated 21.04.1972 (in respect of land measuring 5 biswas) was in favour of the respondent-plaintiff. In the absence of the partition, the suit for possession was not maintainable. The demarcation report i.e. Ex. P-1 & D-5 were totally opposite to each other, in fact the demarcator of the appellant-defendant showed the incapacity/helplessness in demarcating the land owing to the multiple constructions, thus the demarcation report Ex. P-1 was nothing but sheer waste paper. In the absence of the partition, the suit for possession, thus, liable to be dismissed. In support of his contentions he relies upon ratio decidendi culled out “Full Bench” judgments rendered by this Court in ***Ram Chander Vs. Bhim Singh and Others 2008(3)R.C.R(Civil) 685 and Hon'ble Division Bench of this Court in Bachan Singh vs. Swaran Singh 2000(3) R.C.R.(Civil) 70***. Even the sale deed reflected share, whereas the appellant-defendant had been inducted as a lessee by Pawan Kumar who was a lessee of Jiwan Kishore i.e. the vendor of respondent-plaintiff thus there was no privity or relationship of lessor and lessee between the parties. All these factors have not been taken care of and thus there is gross illegality and perversity and the judgment under challenge is liable to be set aside.

Mr. Arihant Jain, Advocate assisted by Mr. Rishav Jain, learned counsel appearing on behalf of Gurmeet Singh-objector in ESA aforementioned submits that the third party objections as per the provision of order 21 Rule 97 of the Code of Civil Procedure was filed as the respondent under the garb of the decree trying to seek the possession of the property in possession of his client. In fact Gurmeet Singh was inducted

as a lessee by Pawan Kumar being lessee of Jiwan Kishore though no date of deed had come on record but Jamabandi for the year 2004-2005 showed that Khasra No. 248/20/2 measuring 5 biswas was/is in possession of Gurmeet Singh. The objections were to be treated as independent suit and dismissal of the same in a summarily manner is alien to the provisions of order 21 Rule 101 of the Code of Civil Procedure. The reasons assigned for dismissal of the objection was that Lower Appellant Court had already identified the property and therefore, the objections of Gurmeet Singh who is alleged to be in possession of Khasra No. was not maintainable as the plaintiff are owner of Khasra No. 248/20/1.

Per contra Mr. S.S.Rangi, Learned counsel appearing on behalf of the plaintiff submits, that the arguments of Mr. Amit Jain, Advocate that until and unless the co-sharer do not partition the property will not be able to part with the possession but the fact remains the lease deed executed by Jiwan Kishore in favour of the Pawan Kumar specifically prohibited for sub-lease. The status of the appellant-defendant is not of a lessee but a sub lessee, therefore, it does not lie in the mouth to raise all these pleas in essence, there is no privity. The Jamabandi relied upon by Gurmeet Singh reveals that the ownership is of respondent-plaintiffs (of Khasra No. 248/20/1 measuring 5 biswas) whereas the Gurmeet Singh is stated to be in possession of 248/20/2 and, therefore, identity of the property had never been in dispute, thus, objection was nothing but at the instance of the defendant in collusion. Concurrent finding of fact cannot be interferd until and unless there is gross illegality and perversity. The judgments relied upon by Mr. Jain, would not be helpful as the same pertains to suit for possession

against a co-sharer and not with regard to the suit for possession.

In rebuttal, Mr.Amit Jain submits that the sale deed does not prescribe a specific share/portion which have been acquired and ownership by the respondent-plaintiff.

I heard learned counsel for the parties and appraised the paperbook and of the view that there is no merit and force in the submissions of Mr.Arihant Jain and Mr. Amit Jain, for, the another co-owners have not come forward to support the plea of defendants. In fact there was implied consent. The possession of Khasra numbers have been different and the ownership of khasra No.248/20/1 reflected in the Jamabandi relied upon by Gurmeet Singh to be in the name of respondent-plaintiffs whereas he is stated to be in possession of 248/20/2. The arguments of Mr. Amit Jain, Advocate at the first instance looks very attractive and forceful, particularly with regard to the property being joint, but the fact remains the said plea would be available only to the co-sharers and not to a sub lessee who had unauthorizedly been inducted by a lessee. It is a common practise in our country to retain the possession of the property unauthorizedly for a unlimited period and also take the aid of the Court by bringing into equities.

There is no dispute to the ratio decidendi culled out in the judgments relied upon by Mr. Amit Jain but the ratio would not apply to the facts and circumstances of this case where certain parameters have been laid down for maintainability of the suit against a co-sharer particularly taking into consideration the provisions of Order 41 Rule (h) of the specific relief Act, 1963.

I am of the view that the person who seeks equity must do

equity in essence no lease deed in favour of the appellant-defendants alleged to have been executed by Pawan Kumar has been brought on record. The lease was only between Jiwan Kishor and Pawan Kumar and not with Gurmeet Singh.

Both the Courts below have had an occasion to examine oral and documentary evidence and arrived at a finding of fact and law which in my view are not liable to be interfered.

For the reasons aforementioned, no ground for interference is made out.

Accordingly, both the appeals are dismissed.

**(AMIT RAWAL)
JUDGE**

November 17, 2016
yogesh mehta/sunil devi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No