

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2610 of 2011 (O&M)

Date of Decision : 04.11.2016

Sewa Singh and others

....Appellants

Versus

Kuldip Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.S. Sachdev, Advocate
for the appellants.

Ms. Amandeep Soni, Advocate
for the respondent.

Surinder Gupta, J.

Kuldip Singh, plaintiff-respondent, is admittedly in possession of the shop and *chaubara* in dispute and Courts below have decreed his suit and restrained defendants-appellants from interfering in possession of plaintiff over the shop and *chaubara*. Defendants-appellants have filed this regular second appeal challenging concurrent findings of Courts below.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Learned counsel for appellants has assailed decreeing of suit of plaintiff on the grounds as follows:-

- (i) Parties are co-sharers in the suit property, as such, suit is not maintainable. In support of his contention, he has relied on judgments passed in **Pahalwan Chand vs. Hans Raj and others, 2012 (1) Civil Court Cases 466 (P&H), Balwinder Singh vs. Gurcharan Singh and others, 2010 (4) Civil Court Cases 005 (P&H)** and **Ranukanta Mullaiah vs. Sircilla Rajamma and**

another, 2007 (1) Civil Court Cases 384 (A.P.).

- (ii) Plaintiff has alleged in the plaint that suit property fell to his share in family settlement but the same was not proved.
- (iii) Plaintiff sought the relief only qua the shop but Courts below allowed him the relief of injunction qua the shop as well as *chaubara*.
- (iv) The disputed property is in possession of *Gurudwara Sahib* and this fact has not been looked into by Courts below.

4. On perusal of judgments of Courts below and statements of parties, copies of which have been supplied by learned counsel for appellants during course of arguments, I find no weight in submissions of learned counsel for appellants. In the written statement, copy of which has been produced on paper-book as Annexure P-2, defendants-appellants have pleaded that the premises in question is occupied by *Gurudwara Kalgidhar Sant Baba Durga Singh* and is managed through committee. It is further pleaded that suit property is the property of *Gurudwara*. It was purchased by their father Durga Singh from the funds raised from public. It is the committee, which is reconstructing the double storey building of *Gurudwara*. It was specifically denied that plaintiff, defendants and their two brothers, namely, Daljit Singh and Kewal Singh owned the property left by Sant Baba Durga Singh or that he divided his property between plaintiff and defendants during his life time. In para 2 of written statement, defendants pleaded as follows:-

“2.In fact, the plaintiff having no place to live

in, partly occupying the ground floor which he calls as shop. It is in possession of Gurudwara and the plaintiff is not in exclusive possession of the same.”

5. In the entire written statement, defendants have nowhere pleaded that they are co-owners of suit property, as such, observations in citations referred by learned counsel for appellants are not helpful in any manner. The principle of law that co-owner cannot seek injunction against other co-owner regarding a joint property, has not been disputed by learned counsel for the respondent but she has argued that these observations are not attracted to this case where appellants are not claiming to be co-owners, rather specific case of appellants is that suit property is in possession of *Gurudwara Sahib* and impliedly they allege that this property belongs to *Gurudwara Sahib*.

6. This fact as to whether *Gurudwara Sahib* is owner of suit property will be decided in appropriate proceedings and is not a subject matter to be decided in this case. Plaintiff has not sought any relief against *Gurudwara Sahib* and judgment and decree in this case will not bind *Gurudwara Sahib* or its managing committee. This argument of learned counsel for appellants that suit is not maintainable has no merit. The subject matter of this suit is only the possession of plaintiff over suit property, which is duly proved and rather admitted, as such, he is not required to prove that it fell to his share in family partition. Submission by learned counsel for appellants that relief has been sought only for the shop and not for the *chaubara*, is also without any merit as in para 2 of the plaint, plaintiff has specifically alleged that he is in possession of the shop alongwith *chaubara* and appellant no. 1-Sewa Singh has specifically

admitted that he is in possession of shop and *chaubara*.

7. On perusal of judgments of Courts below I find no legal or factual infirmity therein. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

November 04, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No