

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

Cross-objections No.7-C of 2014 &
R.S.A.No.1014 of 2012
Date of Decision: April 08, 2016

Harnam Singh

...Appellant

Versus

Lal Chand & others

...Respondents

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

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?

Present: Mr.Rai Singh Chauhan, Advocate,
for the appellant.

Mr.Satbir Rathore, Advocate,
for respondent No.1.

AMIT RAWAL, J.(Oral)

CM No.2697-C of 2012

For the reasons mentioned in the application, which is supported by an affidavit, delay of 81 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.1014 of 2012

The appellant-plaintiff is aggrieved of the findings rendered by the Lower Appellate Court qua declining the relief of injunction in respect of land measuring 15 kanals 15 marlas bearing Khasra No.2150 in a suit instituted in respect of land measuring 28 kanals 11 marlas having different Khasra numbers.

the appellant-plaintiff submits that Churu and Dasondhi were two brothers. The appellant-plaintiff and respondent-defendant No.1 are the real brothers. One Harbans Lal is a stranger. Entry in the jamabandi is of Gair Marusi Dom. Harbans Lal with the connivance of the revenue officials, got the entry in Khasra No.2150 as Gair Marusi and as such he is alleged to have passed on the possession of said khasra number in favour of Lal Chand-respondent No.1/defendant No.1. It is in these circumstances, the cause of action arose in favour of the plaintiff to institute the suit seeking declaration qua the entry and as well as the joint possession qua all khasra numbers and vis-a-vis Khasra No.2150 and also injunction restraining the defendants from dispossessing him forcibly as he is in exclusive possession of the land. The trial Court decreed the suit on the basis of the cross-examination of Lal Chand DW-2, who unequivocally admitted that the plaintiff is in possession of the entire land including Khasra No.2150 (15-15). However, the Lower Appellate Court has upheld the finding vis-a-vis the declaration and possession, but declined the relief of injunction on the ground that since both the parties, i.e., the plaintiff and Lal Chand are co-sharers, the remedy, if any, is to seek partition as no injunction can be granted and, thus, urges this Court to formulate the following substantial questions of law for determination by this Court:-

- a) Whether the co-sharer, who is in exclusive possession of an area/share can seek injunction in view of the judgments rendered by the Division Bench and Full Bench of this Court in **Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70 and Bhartu Versus Ram Sarup, 1981 PLJ 204**
- b) Whether the judgment and decree of the Lower Appellate

Court declining the relief of injunction in view of the categorical admission of defendant No.1 is sustainable in the eyes of law, much less, suffers from illegality and perversity?

Mr.Satbir Rathore, learned counsel appearing on behalf of respondent-defendant No.1 submits that the pith and substance of the claim in the suit is for joint possession of the land measuring 28 kanals 11 marlas bearing Khasra Nos.1107, 2665, 2668 including 2150 and, therefore, rightly so the injunction has been declined. No substantial question of law arises for determination.

The cross-objections though are barred by law of limitation as there is a delay of 666 days in re-filing, but there is incorrect findings vis-a-vis declaration setting-aside the entry of Gair Marusi Dom as Harbans Lal has passed on the possession.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the plea of Mr.Chauhan that it is proved position with regard to seeking of injunction against a co-sharer, who is in exclusive possession and owner of the land. Once the defendant has admitted the possession vis-a-vis Khasra No.2150 measuring 15 kanals 15 marlas in favour of the plaintiff, the trial Court rightly granted the injunction and the Lower Appellate Court should not have reversed the findings. The aforementioned view is supported by the judgments rendered in **Bachan Singh and Bhartu's cases** (supra). On the contrary, it has not surfaced or much less proved on record by direct or cogent evidence as to how and when Harbans Lal passed on the possession to Lal Chand. In the absence of any specific pleadings, cross objections, in my view, are not sustainable, much less no explanation has come forth in

not filing the same within time when the alleged delay has not been explained. No substantial cause or reason has been pleaded.

Since the appellant-plaintiff had averred threat of dispossession qua specific portion and area in possession, the trial Court rightly granted the injunction. Vis-a-vis the other khasra numbers, the appellant-plaintiff and respondent-defendant No.1 are in joint possession, the parties are left open to seek separate possession in case they choose to. The findings declining the injunction will seriously cause irreparable loss and perpetual threat of interference in possession.

Accordingly, the judgment and decree of the Lower Appellate Court vis-a-vis declining the injunction is hereby set-aside. The judgment and decree of the trial Court is restored. The questions of law, as noticed above, are answered in favour of the appellant-plaintiff and against the respondent-defendants.

The appeal stands allowed.

Cross-objections No.7-C of 2014 are dismissed.

April 08, 2016
ramesh

(AMIT RAWAL)
JUDGE