

211

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

**RSA-1835-2012 (O&M)
Date of decision : 17.05.2016**

Rajminder Kaur

... Appellant

Versus

Pritpal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Chanan, Advocate
for the appellant.

Mr. Anupam Bhardwaj, Advocate
for respondent No.1.

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?

AMIT RAWAL, J. (ORAL)

CM-11544-C-2014

Prayer in this applications filed under Order 22 Rule 4 read with Section 151 CPC is for impleading the legal representatives of respondent No.2, namely, Bikramjit Singh.

For the reasons stated in the application, the application is allowed and the legal representatives of respondent No.2, namely, Bikramjit Singh, are permitted to be brought on record for the purpose of prosecuting the appeal.

CM stands allowed.

CM-14066-C-2015

For the reasons stated in the application which is duly supported by an affidavit, application is allowed and the appeal is restroed to its original number.

CM stands disposed of.

RSA-1835-2012

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking permanent injunction qua forcibly dispossession and interference except in due course of law at the behest of respondent No.1-plaintiff, has been decreed by both the Courts below.

Mr. D.S. Chanan, learned counsel appearing on behalf of the appellant-defendant submits that there is a complete misreading of the oral and documentary evidence. The Jamabandi (Ex.P-1) shows the status of defendant No.1 as co-sharer, whereas the findings is totally contradicted, in essence, the trial Court was an audacious to mention that the name of defendant No.1 as co-sharer, does not figure in the jamabandi, therefore, the suit simpliciter was not maintainable, in essence, respondent No.1-plaintiff has not able to prove the exclusive possession and the remedy, if any, was to seek the partition in accordance with law, thus, urges this Court to formulate the following substantial questions of law :-

1. Whether the simpliciter suit for injunction in the absence of exclusive possession, 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**, was maintainable or not?

2. Whether the judgment and decree of both the Courts below suffers from illegality and perversity.

Mr. Anupam Bhardwaj, learned counsel for respondent No.1-plaintiff submits that both the Courts below have concurrently found that the appellant-defendant is not a co-sharer and therefore, the injunction has been granted. In the absence of the status of the defendant being co-sharer, injunction can be granted against third party. Even otherwise, respondent No.1-plaintiff is not in exclusive possession, therefore, the suit was maintainable, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and also seen the record of the Courts below and on perusal of Jamabandi (Ex.P-1) i.e. mutation, it is crystal clear that the appellant-defendant has also shown as co-sharer regarding her share. The other documentary evidence placed on record, does not show the exclusive possession of respondent No.1-plaintiff and the issue, in this regard, qua the maintainability of the suit was also raised, in my view, the Courts below ought to have relegated the plaintiff to seek the partition of the property in accordance with law, instead of entertaining the claim of permanent injunction. In my view, the judgment and decree of both the Courts below are not sustainable, in view of the ratio decidendi culled out in the judgments cited supra, wherein it has been held that the suit for permanent injunction, in the absence of exclusive possession, is not maintainable. The remedy, if any, was to seek the partition and injunction.

For the foregoing reasons, the judgment and decree of both the Courts below are hereby set aside and the substantial questions of law as

noticed above are answered in favour of the appellant-defendant and against respondent No.1-plaintiff. The suit is dismissed.

However, the aforesaid observation of mine shall not preclude respondent No.1-plaintiff to claim the partition in accordance with law.

With the aforesaid observations, the appeal stands allowed.

17.05.2016
yogesh

(AMIT RAWAL)
JUDGE