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

**RSA-2862-2012 (O&M)
Date of decision : 11.07.2016**

Kulwant Kaur

... Appellant(s)

Versus

Nachhattar Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.C. Chhabra, Advocate
for the appellant(s).

Mr. Munish Gupta, Advocate
for the respondent(s).

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)

The appellant-defendant is aggrieved of the judgement and decree rendered by the lower Appellate Court, whereby the suit for permanent injunction seeking injunction with regard to the suit property bearing Killa No. 7//6/8-0, 7//17/8-0, 23/8-0, 24/8-0, 2//23/4-0, 24/1/3-16, 7//15/1/4-0, 15/2/4-0, 16//3/8-0, 7//22/8-0, 16//4/8-0, 7/8-0, 8/2/6-0 situated in area of Heero Kalan District Mansa, was sought. The trial Court on the basis of the oral and documentary evidence declined the injunction, but the lower Appellate Court has reversed the findings.

Mr. S.C. Chhabra, learned counsel appearing of behalf of the appellant-defendant submits that as per the Khasra girdawari (Ex.D-3) for

the sauni season 2006-07, the successor-in-interest of Gurdev Singh, since deceased, are not reflected as owner, much less, any name. The same is the position with Nachhattar Singh. Though the suit was filed on 03.03.2009, thus, rightly so, the Court below declined the injunction, even the partition proceedings have attained finality and the respondent(s)-plaintiff(s) have lost upto the second court and the second revision with ROR is pending for adjudication before the Financial Commissioner, Revenue. The injunction cannot be granted against the co-owner until and unless one of the co-owners found to be in exclusive possession. The Ex. D-3 is the correct khasra girdawari which has attained finality, though had been challenged by the respondent(s)-plaintiff(s), thus, urges this Court to formulate the following substantial question of law of noticed by this Court vide order dated 15.01.2015: -

“Whether a co-sharer can seek permanent injunction against other co-sharer without due proof of his exclusive possession and and that his vendor and predecessor-in-interest was also in exclusive possession of the land in question?

Mr. Munish Gupta, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that khasra girdawari (Ex. P.1) clubbed with Ex.P-2 shows the exclusive possession of the Gurdev Singh and rightly so, the lower Appellate Court found the exclusive possession of the respondent(s)-plaintiff(s) and granted the injunction. Since, the partition proceedings have already been initiated, the injunction may be permitted to continue and can be a subject matter of partition in respect of the khasra number already aggregated by the revenue Court. The khasra girdawari

heavily relied upon by the appellant-defendant Ex.D-3 is already under challenge, thus, urges this Court for affirming the findings rendered by the lower Appellate Court as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book.

For the purpose of the claiming injunction viz-a-viz the co-sharer, law is already settled by the judgment rendered by Full Bench of this Court in “**Bhartu Vs. Ramsaroop**” 1981 PLJ 204 and reiterated by Division Bench of this Court in “**Bachan Singh Vs. Swaran Singh**” 2000 (3) RCR (Civil) 70.

In case, the column of ownership and possession, the parties are shown to be share-holder and have, even alienated their part of the share, the vendee cannot put into the exclusive possession, he would be only stepping into shoes viz-a-viz his share having been purchased. The cause of action, to be seen for determination of the injunction, is filing of the suit i.e. on 03.03.2009. As per the khasra gridawari (Ex. D-3) for the sauni season 2006-07, name of the Gurdev Singh in the column of possession i.e. Column No. 9, did not figure. The khasra girdawari is already under challenge. The lower Appellate Court, in my view, misread and misinterpreted the document i.e. khasra girdwari (Ex.D-3) heavily relied upon vide Ex.P-2 which was set aside vide Ex.D-3. Since, the matter is pending before the Financial Commissioner, Revenue by way of second revision, the respondent(s)-plaintiff(s) shall be entitled to seek interim stay, but not in the manner and mode as has been adopted.

For the foregoing reasons, I am of the view the judgement and decree of the lower Appellate Court is not sustainable and accordingly, the judgement and decree is hereby set aside and that of trial Court is restored. The substantial question of law as noticed above is answered in favour of the appellant-defendant and against the respondent-plaintiff.

With the aforesaid observations, the appeal stands allowed.

11.07.2016
yogesh

(AMIT RAWAL)
JUDGE