

Regular Second Appeal No.3987 of 2012 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3987 of 2012 (O&M)

Date of Decision: August 30, 2016

Ajay Kumar

...Appellant

Versus

Sukhjit Singh

...Respondent

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

Present: Mr.Satinder Khanna, Advocate,
for the appellant.
Mr.R.S.Bains, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit seeking permanent injunction of forcible interference and dispossession at the hands of the respondent-defendant in respect of plot measuring 36 marlas (75' x 88') shown in letters marked BDIJ in the site plan enclosed with the plaint and encircled by a boundary wall.

Mr.Satinder Khanna, learned counsel for the appellant-plaintiff submits that vide sale deeds Ex.P4 and Ex.P5, the appellant purchased the aforementioned property and was put into possession. The respondent-defendant dispossessed him and in this background of the matter, the suit was filed.

partition proceedings are stated to be pending. Once the co-sharer has a right in the aforementioned property, therefore, injunction could not have been declined. There has been gross misreading of the contents of the sale deeds and, thus, the substantial questions of law as culled out in the grounds of appeal arise for determination. Mr.Khanna also relies upon the judgment rendered in **Tanusree Basu & Ors. Versus Ishani Prasad Basu & Ors., 2008(3) R.C.R. (Civil) 519.**

Per contra, Mr.R.S.Bains, learned counsel for the defendant-respondent submits that the appellant-plaintiff has miserably failed to prove the exclusive possession, much less long and settled possession. The sale deeds, though confer the title but the same are with regard to the share. The proper and appropriate remedy was partition proceedings, which are already pending and rightly so, the Courts below have declined the injunction.

I have heard the learned counsel for the parties, appraised the paper book and of the view that for the purpose of claiming injunction, the appellant-plaintiff has failed to prove the exclusive possession. No doubt, the parties to the lis are co-sharers. Partition proceedings are statedly pending. Injunction suit would have been maintainable if the plaintiff has been able to prove the exclusive possession in view of the ratio decidendi culled by the Full Bench of this

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Court in **Bhartu Versus Ram Sarup**, 1981 PLJ 204 and reiterated by the Division Bench in **Bachan Singh Versus Swaran Singh**, 2000 (3) RCR (Civil) 70.

There is no dispute to the ratio decidendi culled out in **Bachan Singh and Bhartu's case (supra)**, but the fact remains that for claiming injunction, the person is to prove his exclusive possession. Having failed to do so, the ratio decidendi culled out in **Tanusree Basu's case (supra)** would not come to the help and aid of the plaintiff.

I do not intend to differ with the findings rendered by both the Courts below.

Since the partition proceedings, as stated at bar, are still pending, I deem it appropriate to issue direction to the revenue authorities to expedite the finality of the partition proceedings stated to be pending, preferably within a period of six months from the receipt of certified copy of this order.

By upholding the findings rendered by both the Courts below, I dispose of the present appeal with the aforementioned direction.

August 30, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No