

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

**RSA No. 2077 of 2016 (O&M)
Date of decision: 28.04.2016.**

Harbhajan Singh

.....Appellant

Versus

Dalbir Kaur & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sarabjeet Khaira, Advocate
for the appellant.

JITENDRA CHAUHAN, J.

CM No. 5475-C of 2016

There is a delay of 23 days in filing the appeal. For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 23 days in filing the appeal stands condoned. The application is allowed.

Main case

This Regular Second Appeal has been filed by the plaintiff against the judgment and decree dated 06.04.2013, passed by Civil Judge (Sr. Divn.), Gurdaspur (for short “the trial Court”) vide which the suit filed by the plaintiff was dismissed and; the judgment and decree dated 26.11.2015 passed by Additional District Judge, Gurdaspur (for short “the lower appellate Court”) whereby the appeal filed by the plaintiff, was dismissed.

In brief, the plaintiff filed suit for permanent injunction restraining the defendants from interfering into his peaceful possession over the suit land. It was pleaded by the plaintiff that he was in actual, peaceful and cultivating possession of the suit property for the last 30 years. The names of the plaintiff and his brother Gurcharan Singh had been duly incorporated in the Khasra Girdawri. The defendants had no right, title or interest in the suit land but under the garb of sale deed dated 10.11.2008, executed by Rajwant Kaur, Harbhajan Kaur and Rattan Kaur in favour of defendant No.1, the defendants had been threatening to interfere in the peaceful possession of the plaintiff. The sale deed was a result of fraud and fabrication. On request made by the plaintiff to the defendants not to interfere, the defendants did not pay any heed. Hence the suit.

Upon notice, the defendants appeared and contested the suit. It was pleaded by the defendants that the defendant No.1 purchased the land measuring 2 kanals 3 marlas out of the suit property from Rajwant Kaur, Harbhajan Kaur and Rattan Kaur vide sale deed dated 10.11.2008. The vendors were owners in possession of the aforesaid land. Therefore, the defendant No.1 had stepped into the shoes of the vendors. At the time of sale deed, the vendors delivered the possession of the aforesaid land to the defendant No.1. In this regard, mutation had also been sanctioned in favour of defendant No.1. The defendant No.1 had already filed application for correction of Khasra Girdawri which was pending before the Court of Tehsildar,

Gurdaspur.

After appraisal of the evidence, learned trial Court dismissed the suit holding that since the defendant no.1 has purchased land from the co-sharers i.e. Rajwant Kaur, Harbhajan Kaur and Rattan Kaur, she had every right to use the suit land in a manner, she liked. The possession of the defendants over the suit land was also established. Consequently the relief of prohibitory decree against the defendant/co-sharers was declined vide the judgment and decree dated 06.04.2013 passed by the trial Court.

Feeling dissatisfied, the plaintiff filed appeal before the Additional District Judge, Gurdaspur which came to be dismissed vide decree dated 26.11.2015. Hence, the present Regular Second Appeal at the behest of the plaintiff.

On behalf of the appellant, it is contended that since the appellant is found to be in settled possession over the suit land, so he has every right to seek injunction against his dispossession. When the possession of the parties is joint, no specific portion can be handed over to the subsequent vendees. It is further contended that this aspect of the matter has not been considered by both the Courts below, therefore, the judgments and decrees passed by the Courts below are liable to be set aside.

I have heard the learned counsel for the appellant and have gone through the case file.

It is a suit for permanent injunction. The plaintiff seeks to

injunction against the other co-sharers by filing the present suit. It is the admitted case of the parties that the vendors of defendant No. 1 i.e. Rajwant Kaur, Harbhajan Kaur and Rattan Kaur daughters of Inder Singh were co-sharers in the suit land. Their share in the suit land is to the extent of 2 Kanals 3 Marlas. It is not the case of the plaintiff/appellant that the land has been wrongly sold by the aforesaid vendors to defendant No. 1. Plea of plaintiff that sale deed in favour of defendant No. 1 is the result of fraud and fabrication, is undeserving of acceptance. It is established on record that the sale deed is legal, valid and for consideration. Once the relationship of co-sharer is admitted then the vendees have every right to enjoy the property as was vested in the vendor. This being so, the plaintiff being a co-sharer cannot seek injunction against another co-sharer. The only remedy available to the plaintiff is to seek the partition of the land. Otherwise also, unless partition is effected, every co-sharer has right over each and every inch of the land. The argument raised by the learned counsel for the appellant relates to the question of fact only and no substantial question of law is involved in the present regular second appeal. There is no mis-reading or mis-interpretation of the evidence. Consequently, the judgments and decrees passed by both the Courts below are upheld. Thus, the appeal is dismissed.

28.4.2016.
SN

(JITENDRA CHAUHAN)
JUDGE