

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2296 of 2016 (O&M)
Date of Decision : 20.09.2016

Bahadur Khan and others

....Appellants

Versus

Shaukat Ali Khan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mandeep Kumar Dhot, Advocate
for the appellants.

Surinder Gupta, J.

This is appeal against judgment passed by Additional District Judge, Sangrur whereby separate appeals filed by Asif Khan and Shaukat Ali Khan were accepted and suit of plaintiffs-appellants seeking the relief of permanent prohibitory injunction restraining the defendants from interfering in peaceful possession of suit land measuring 23 *bighas* and 18 *biswas* as fully described in headnote of the plaint, was dismissed.

2. Plaintiffs-appellants claimed their title and possession over the land measuring 23 *bighas* 18 *biswas* situated in village Uppal Kheri, *Tehsil* Malerkotla, District Sangrur. It was alleged that defendant no. 1-Shaukat Ali Khan purchased some land from Nazir Khan but never came in possession of the same. No partition has taken place between co-sharers. Mohd. Nazir Khan filed a suit against plaintiffs and Saudagar Khan seeking possession of suit land, which was decreed by the trial Court but the appeal against judgment and decree of the trial Court was accepted by Ist Appellate Court. Thereafter, Mohd. Nazir Khan got registered FIR No. 291 dated 03.12.2002 against plaintiffs and others for offence under Section 447 IPC qua suit land, which was cancelled. Now defendants are threatening to dispossess plaintiffs

3. Defendants contested claim of plaintiffs *inter alia* pleading that defendant no. 1 is in possession of suit land as co-sharer. He has purchased land measuring 2 *bighas* out of suit land vide sale deed no. 2592 dated 09.12.2010 from Nazir Khan and possession was delivered to him at the spot. Plaintiffs are not in exclusive possession of land in dispute.

4. Learned Civil Judge (Junior Division), Malerkotla decreed the suit of plaintiffs with observations as follows:-

“11.Perusal of the jamabandi for the year 2007-08 Ex.P-1 and jamabandi for the year 2012-13 Ex. P-2 shows that the suit land measuring 23B 18B is joint land and no partition has taken place between the parties. Moreover, the defendant no. 1 was also shown in jamabandi for the year 2012-13 Ex. P2 owner in the column no. 3 of jamabandi. No co-sharer was shown in exclusive possession of the suit land. It is a well settled law that every co-sharer has a right of possession over the joint land till the partition. In the present suit all the co-sharers including defendant no. 1 are shown owner in joint possession as per their share. It is a well settled law that no co-sharer can interfere in the peaceful possession of the other co-sharer till the partition. Accordingly, the defendant no. 1 cannot interfere in the peaceful possession of the plaintiffs over the suit land as per their share.”

5. As per observations of learned Civil Judge (Junior Division), plaintiffs are owners in joint possession of property alongwith other co-

sharers and no partition between parties has taken place. Admittedly,

defendant no. 1 is also one of the co-sharers in suit land and a suit by co-sharer against other co-sharer seeking the relief of injunction to restrain him from interfering in possession of joint land is not maintainable until and unless co-sharer establishes his exclusive possession.

6. On appeal, Ist Appellate Court on the basis of record held that exclusive possession of plaintiffs over any part of property is not established.

7. During course of arguments, learned counsel for appellants could not assail above finding of Ist Appellate Court. Being not in possession of suit land to exclusion of defendant no. 1-Shaukat Ali Khan, plaintiffs have been rightly declined the relief of injunction sought by them by Ist Appellate Court. The finding of fact recorded by learned Ist Appellate Court calls for no interference. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

September 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No