

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

RSA-769 of 2013 (O&M)

Date of decision: 24.05.2016

Shadi Ram

...Appellant

Versus

Bachna Ram

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Yowan Sharma, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The plaintiff/respondent filed a suit for permanent injunction. The trial Court vide judgment and decree dated 10.05.2010, decreed the suit.

2. Aggrieved against the findings of trial Court, the defendant/appellant filed an appeal which was dismissed by the learned first Appellate Court, vide judgment and decree dated 14.09.2012.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral

as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. It is contended that the appellant came into possession of the suit property through the registered sale deed dated 03.01.1997 which has not been assailed till date. The observation of learned trial Court that the remedy of defendant/appellant lies against Shiv Ram (brother of plaintiff) is not justified as said Shiv Ram was not a party to the suit. The appellant had taken a specific stand in the written statement that the suit had been filed in collusion with Shiv Ram. The suit has been filed during the partition proceedings; the respondent and Shiv Ram knew that the land had already been sold to the appellant but they did not implead the appellant a party in the partition proceedings which clearly amounts to fraud and collusion.

5. Heard, the learned counsel for the appellant and perused the record.

6. The case of the plaintiff/appellant is that the suit land i.e. 1/3rd share in khasra No. 175 was sold by Shiv Ram, brother of the respondent to the appellant, vide registered sale deed and the respondent has no right, title or interest in the suit property.

The total land was 134 kanals 5 marlas which was partitioned on 18.08.1998. The application for partition was moved on 27.12.1996. The respondent was given 44 kanals 9 marlas out of the total land. Earlier the appellant had filed a suit for declaration that he was owner of 1/3rd share in khasra No. 175 but the same was withdrawn on 03.01.2009. It is pertinent to mention here that respondent had also instituted a suit in the year 1997, after he came to know that the property had been sold out, wherein the appellant was made a party. In that suit, the appellant had denied that the property was joint and it was submitted that the property had already been partitioned orally several years ago and the respective owners were in possession of their share and the suit property was in exclusive possession of his vendor Shiv Ram. The respondent had also mentioned in the plaint of said suit that his application for partition was pending before the Assistant Collector. The land was purchased on 01.01.1997, whereas the land was partitioned on 18.08.1998. It has come on record that the appellant was aware of the pendency of the partition proceedings but he neither took steps to get himself impleaded as a party to assert his claim nor he moved any application for setting aside the partition

proceedings. The suit property was joint on 01.01.1997 and it is settled law that a specific or particular khasra number cannot be sold by a co-sharer till its final partition. Shiv Ram did not have exclusive possession of any khasra number. The respondent being the rightful owner of the suit property got his share in the partition proceedings. The appellant has miserably failed to establish his right qua the suit land or any fraud was played on him. Moreover, plea of fraud has to be proved like a criminal charge. Reliance in this regard can be made to **Hari Narain and another** Vs. **Revti Parkash and others**, 2012(2) PLR 409 (P&H), wherein it was held that even in civil cases, fraud is required to be proved beyond reasonable doubt like a criminal charge. In the instant case, the plaintiff has failed to establish the alleged fraud by even preponderance of evidence, what to talk of proving it beyond reasonable doubt. It is made clear that the suit of the plaintiff was decreed regarding permanent injunction only to protect the possession only except in due course of law.

7. In the face of the evidence and material on record, this Court concurs with the observations of both the Courts below. There is no illegality or perversity in the judgments and decrees passed by the Courts below. No substantial question of

law arises for consideration. Hence, no interference is called for.

Dismissed.

24.05.2016

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(JITENDRA CHAUHAN)
JUDGE