

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

**R.S.A No.4340 of 2016(O&M)
Date of decision :19.12.2016**

Lakhwinder Singh and another

.....Appellants

Versus

Jasbir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Aman Pal, Advocate
for the appellants.

DARSHAN SINGH, J. (Oral)

The present appeal has been directed against the judgment and decree dated 21.03.2016 passed by the learned Additional District Judge, Ferozepur, whereby the appeal filed by the appellants-plaintiffs against the judgment and decree dated 25.05.2015 passed by the learned Additional Civil Judge (Sr. Division), Ferozepur, has been dismissed.

2. The appellants-plaintiffs filed the suit for permanent injunction restraining the defendants from causing any interference into the lawful and peaceful cultivating possession of the plaintiffs over the suit land measuring 9 kanals 5 marlas detailed and described in the head note of the plaint situated in the revenue estate of village Valoor, Tehsil and District Ferozepur.

3. As per the averments in the plaint, the respondent-defendant no.1-Jasbir Singh sold the land measuring 6 kanal 17 marlas to plaintiff no.1

vide registered sale deed dated 06.08.2008. The possession thereof was also delivered to the plaintiff by defendant no,1 and since then, he is owner in possession of the aforesaid land. Similarly, defendant no.2-Mohinder Kaur also sold the land measuring 2 kanals 8 marlas to plaintiff no.2 vide registered sale deed dated 16.09.2008, the possession thereof was also delivered to plaintiff no.2. So, in this manner, the plaintiffs are owners in possession of the suit property. But, the defendants in connivance with each other had threatened to interfere in the possession of the plaintiffs for which they have no legal right. Hence, the suit.

4. The suit has been contested by the defendants by filing the joint written statement pleading therein that Mohinder Kaur was the owner of the suit land measuring 6 kanal 17 marlas out of the suit land. She was also having another land measuring 6 kanal 4 marlas. She has constructed a residential house over some part of the suit land, which is shown in red colour in the site plan attached with the written statement. Respondent-defendant no.2 Mohinder Kaur along with family members is residing therein. It is further pleaded that on 11.09.2010, the plaintiffs along with some bad elements tried to dispossess them from the suit property. But, their attempt was foiled with the intervention of the respectables of the locality. Defendant no.2 filed a suit for permanent injunction titled as 'Mohinder Kaur Vs. Lakhwinder Singh and others' and obtained the stay order. It was further pleaded that the respondent-defendant no.1-Jasbir Singh never sold any suit land to the plaintiffs and if there is any sale deed, the same is illegal. With these pleas, the respondents-defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were

framed by the learned trial Court vide order dated 23.11.2010:-

1. Whether the plaintiffs are in possession of the property in dispute? OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed? OPP
3. Whether the suit of the plaintiffs is not maintainable? OPD
4. Whether the plaintiffs have no *locus standi* to file the present suit? OPD
5. Whether the suit of the plaintiffs is false, frivolous and vexatious to the knowledge of the plaintiffs? OPD
6. Whether the plaintiffs have not come to the Court with clean hands and have suppressed the material facts from the Court? OPD
7. Relief.

6. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellants-plaintiffs with costs vide impugned judgment and decree dated 25.05.2015.

7. Aggrieved with the aforesaid judgment and decree, the appellants-plaintiffs preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Ferozepur, vide impugned judgment and decree dated 21.03.2016. Hence this Regular Second Appeal.

8. I have heard Mr. Aman Pal, Advocate, learned counsel for the appellants and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that the learned Courts below have dismissed the suit on the plea that respondents no.1 and 2 are also the co-sharer in the suit land and no injunction can be granted against the co-sharer. He contended that no such plea has been raised by the respondents-defendants in the written statement. He further contended that respondents-defendants have already sold their entire share and were left with no share in the suit land, so they cannot be considered to be co-sharers. He further contended that the plaintiffs-appellants are owner in possession of the suit land on the basis of the sale deeds dated 06.08.2008 and 16.09.2008. So, they are entitled for the decree

of permanent injunction against any illegal interference in their possession over the suit land.

10. I have duly considered the aforesaid contentions.

11. The appellants-plaintiffs have sought a decree of permanent injunction restraining the defendants from interfering in their possession over the suit property. The appellants-plaintiffs have based their claim on the basis of the sale deeds dated 06.08.2008 and 16.09.2008 executed by defendants no.1 and 2 in favour of the plaintiffs no.1 and 2 respectively. The plaintiffs-appellants have also led the evidence to prove the execution of the aforesaid sale deeds. They have also brought on file the copy of the judgment and decree Ex.PA and PB. That was a suit filed by respondent-defendant Mohinder Kaur against the present appellants. The said suit filed by Mohinder Kaur was dismissed. Even, the appeal preferred against the aforesaid judgment and decree was dismissed by the learned First Appellate Court. But, there is no denial to the fact that in the judgment Ex.PA, the learned Civil Judge had held that through the aforesaid sale deeds plaintiffs-appellants have become co-sharer along with defendant no.2 in the suit land.

12. The appellants-plaintiffs have not led any evidence to establish that the respondent-defendant no.1 have sold their entire share in the suit land and was left with no share in the suit land. The appellants have not placed on record the copies of the revenue documents to show the total land holding/share of the respondents-defendants and the fact as to how much land they have sold out of their share. In the absence of that documentary evidence, it cannot be stated that the defendants-respondents have exhausted their entire share.

13. There is no dispute with the proposition of law that every co-sharer is presumed to be in possession of every inch of the land and no injunction can be granted against a co-sharer in the absence of the exclusive and established possession. Once, this fact is established that the parties are co-sharers, the question as to whether the injunction can be granted or not is purely a legal question, which can be taken note of by the Court, even if no such plea has been raised in the written statement.

14. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

15. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

16. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

(DARSHAN SINGH)
JUDGE

19.12.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No