

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3618 of 2015 (O&M)

Date of Decision: 04.02.2016

Maghar Singh

... Appellant(s)

Versus

Jagmail Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gopal Singh Nahel, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal by the defendant is against concurrent findings of both the Courts below, whereby the Court of first instance decreed suit for permanent injunction, thereby restraining the defendant from raising any sort of construction over the land in dispute or change the nature of the suit land, except in due course of law. First appeal also having been dismissed by learned Additional District Judge, Sangrur.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Learned counsel for the appellants mainly took the plea

that both the Courts below have not considered the oral and documentary evidence available on the file and because of misappreciation of evidence, erroneous findings have been recorded. Both the Courts below failed to appreciate that suit property is joint and both the parties are co-sharers and as such no injunction can be issued against the co-sharer and proper remedy for the plaintiff/respondent is to get the suit land partitioned. Once the parties are held to be joint owner, no injunction order can be issued against the co-sharers. On this point, reliance has been placed upon judgment from the Division Bench of this Court in case ***Bachan Singh v. Swaran Singh 2000(3) RCR (Civil) 70*** and another judgment of co-ordinate Bench of this Court in case ***Budh Singh and Others v. Balbir Singh 2010(2) RCR (Civil) 613***.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record of the case, this Court is of the considered view that concurrent findings of facts have already been recorded by both the Courts below and there is no substantial question of law involved in this case, which calls for acceptance of the present regular second appeal. This Court says so because both the Courts below have appreciated the controversy that as per jamabandi for the year 2006-07, suit land is joint property of the parties. No formal partition has taken place as yet. The plea was also raised before the Courts below that plaintiff sold some portion of the property out of the suit land and as such he is not entitled to injunction. But at the same time, law on the point is settled that if a co-sharer is in

exclusive possession of any part of joint land, such a co-sharer cannot be permitted to raise construction on the joint land without partition. To that extent, there is no ambiguity on the facts. In view of the peculiar facts of the case, the judgment rendered by the Division Bench of this Court in case ***Bachan Singh v. Swaran Singh*** (*supra*) and view taken by co-ordinate Bench of this Court in case ***Budh Singh and Others v. Balbir Singh*** (*supra*), is not applicable on the facts to the present set of facts. The facts of the present case are distinguishable from the case of ***Bachan Singh v. Swaran Singh*** (*supra*) and ***Budh Singh's case*** (*supra*) on this point because in the present case, appellant is not a co-owner, who is in exclusive possession and to that effect concurrent findings of facts have been recorded by both the Courts below.

In view of above, present regular second appeal against concurrent findings of both the Courts below and there being no substantial question of law involved in the present appeal, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.***

In view of the above, the present regular second appeal stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

February 4, 2016

"DK"