

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.544 of 2016 (O&M)
Date of decision: 25.10.2016

Ranjodh Singh

... Appellant

versus

Karnail Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Mohinder Kumar, Advocate,
for the appellant

AMOL RATTAN SINGH, J.

1. This is the second appeal of the plaintiff after his suit seeking a decree of permanent injunction against the respondents was dismissed and the first appeal filed by the present appellant was also dismissed by the learned lower appellate Court.

Briefly stated, the facts, as taken from the judgment of the learned Civil Judge (Junior Division), Nabha, are that the suit land was admitted in the plaint to be comprised in a joint khewat held by the parties, with the appellant-plaintiff (hereinafter referred to as a appellant) in exclusive possession of various khasra numbers as were detailed in the plaint. He was also stated to have constructed a house on one part of the khewat. A domestic electricity connection and a “motor connection” were also stated to have installed in one of the khasra numbers in his possession.

It was further contended in the plaint that the respondent-defendant (hereinafter referred to as a defendant) was threatening to alienate the suit land by way of specific khasra numbers and that such land was of

better quality and more valuable, which would prejudice the rights of the appellant. Yet further, it was also alleged that the defendants were threatening to change the nature of the land without getting it partitioned and were also threatening to interfere in the peaceful possession of the land possessed by the appellant.

2. Upon notice issued in the suit, the defendants appeared and filed the written statement, taking preliminary objections on maintainability, cause of action, locus etc. and further contending that the suit land was not comprised in a joint khewat nor was it a joint holding between the parties, and the plaintiff was also not in exclusive possession of any land, as alleged by him. Construction of a house over the land by him was also denied, further stating that the stand of the plaintiff was self contradictory, to the effect that on the one hand he was contending that he had constructed a house on it while on the other he was seeking relief against change of the nature of the land.

Subsequently however, as recorded in the judgment of the learned Civil Judge, the defendants stated that they are co-sharers in the khewat, with defendants no.1 & 2 in joint possession with the plaintiff in khewat no.19, khatoni no.25, but with the land comprised in khatoni no.28 of the same khewat, being in the exclusive ownership and possession of defendants no.1 & 2.

It was further averred that these two defendants had transferred a 27/200th share, i.e. 1 kanal and 7 marlas, in favour of defendants no.3 & 4 and on the basis of the said sale a mutation had also been duly entered in the revenue record. Thus it was contended that the plaintiff has no right, title or

concern with khatoni no.28 in any manner.

The allegations of the appellant being threatened etc. were also denied, further contending that in fact, the conduct of the plaintiff was clear to the effect that he wanted to grab the land of the defendants by filing the suit.

3. A replication having been filed to the aforesaid written statement, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP

2. Whether the present suit is not maintainable in the present form?OPD

3. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD

4. Whether the present suit is false, frivolous and vexatious?OPD

5. Whether the plaintiff has concealed the true ad material facts from the court and has not come to the court with clean hands?OPD

6. Relief.”

4. The plaintiff examined himself, one draftsman, Jatinder Shah Singh and one Gurdarshan Singh, as PWs 1 to 3 respectively.

The defendant examined only defendant no.2, Kulwinder Kaur, as DW1.

5. Upon appraisal of the evidence, the learned Civil Judge came to the conclusion that as per the documentary evidence, in the form of 'jamabandis' (records of right), it was proved that the plaintiff and the defendants were co-sharers in the suit land but with the plaintiff not shown to be in exclusive possession over any part of it. The suit land was also not

found to have been partitioned and the plaintiff himself had sold specific khasra numbers out of the entire khewat to a different person, as reflected in the 'jamabandi' for the year 2003-04.

Hence, it was held that he in any case could not seek an injunction against the defendants from alienating any part of the joint holding, as he had himself alienated a part of it.

This was held even while observing that every co-sharer has a right to every inch of a joint khewat but if a co-sharer sold / alienated any part of the joint holding, even by specific khasra numbers, the right of other co-sharers is not affected and would be “subject to partition of the joint holding”.

6. Yet further, as regards the plaintiff's prayer for injunction even with regard to the electric connection to run a motor of 7.5 horse power, which connection was in the name of the plaintiff himself, it was held that though the said fact was proved from the pass book etc., however, he had not even mentioned the account number in the plaint and therefore, the evidence led was beyond pleadings. In any case, even if it was assumed that the electric motor installed in his name, it being installed in jointly held land, it was a part of the joint property. In this regard, a judgment of the Supreme Court in ***Gopi Ram vs. Sham Sunder 2006(2) RCR (Civil) 710*** was cited by the learned Civil Judge.

7. The factum of the house of the plaintiff having been constructed was found to be proved even by way of Ex.P29, which was a statement made by the second defendant in an earlier litigation between the parties. A compromise deed, Ex.P7, arrived at in that litigation, was also

found to have been proved, in which the construction of the house was again admitted.

8. On the aforesaid findings the suit of the plaintiff was partly decreed, restraining the defendants from illegally and forcibly interfering in the peaceful possession of the plaintiff as regards the house, but the prayer for injunction qua the other suit property including the electricity motor connection, was rejected and the suit to that extent was dismissed.

9. No satisfied with the decreeing of the suit in part, the plaintiff filed an appeal under Section 96 of the CPC, which was heard by the learned Additional District Judge, Patiala, who, after noticing the pleadings and appraising the evidence, came to the conclusion that the findings recorded by the learned trial Court on issue no.1, i.e. the principal issue, required modification to the effect that the plaintiff could not be held to be in exclusive possession of any khasra number, there being no reflection of such specific possession in the revenue record, as there had been no partition of the suit property by metes and bounds.

The finding of the Civil Judge with regard to the electric connection being installed on joint land, even with the connection standing in the name of the plaintiff, was upheld by the lower appellate Court, further holding that with the defendants not having installed any other tubewell for irrigating their land, they could not be restrained from using the water connection from the electricity motor installed in the name of the plaintiff.

10. It was further held by the first appellate Court that even though the plaintiff had constructed his house over some part of the land, yet, the defendants had no right to change the entire nature of the land, but with

there having been no threat from them proved, the prayer for injunction in that regard was pre-mature, with the plaintiff at liberty to seek such injunction if there was any imminent threat to the change of the nature of the land.

11. Having held in the above manner, the lower appellate Court still went on to hold that the Civil Judge had erred in refusing to injunct the defendants from alienating any specific khasra number, the land still being jointly held.

Hence, on the aforesaid reasoning, the appeal of the plaintiff was partly allowed and the judgment and decree of the lower court was modified, by further granting an injunction against the defendants, restraining them from alienating any specific khasra numbers of the suit land, prior to its partition.

12. The plaintiff still not satisfied, has now filed this 2nd appeal.

As a matter of fact, in the wake of the aforesaid judgment and decree, the same not having been challenged by the defendants, this Court had expressed surprise at the second appeal having been filed. However, learned counsel for the appellant-plaintiff submitted that the main grievance of the plaintiff is in respect of the electric connection (and the motor being run with it).

13. Mr. Mohinder Kumar has vehemently tried to convince this Court that since there is a tubewell connection in the exclusive name of the appellant installed on the suit land, which admittedly has not been formally partitioned, and there was an admission of respondent-defendant no.1 to the effect that the appellant was in actual possession of specific khasra

numbers, the learned Courts below have wholly erred in holding that the tubewell connection is also installed on joint land and simply because it stands in the name of the appellant-plaintiff, it cannot be said that he was the exclusive owner of the same.

14. Having considered that argument, I cannot agree with it, as the land itself has been described as '*chahi*' in the jamabandi for the year 2008-09, with the source of irrigation shown to be that of the same tubewell.

15. As regards the admission of respondent-defendant no.1 with regard to the appellant being in exclusive possession of specific khasra numbers, that would not help the appellant either, in view of the fact that if he is in exclusive possession of specific khasra numbers, that would obviously imply that the respondents-defendants are also actually in exclusive possession of specific khasra numbers, which is not denied by learned counsel. Further, it is nobodys' case that they are in possession in excess of their respective shares.

That being so, the only apprehension with the appellant could be that the respondents-defendants should not sell off any land beyond their share and should not interfere in his possession over the suit land.

That injunction in any case has been granted to him by the learned lower appellate Court. Hence, with the learned Courts below granting liberty, which in any case could not have been denied, to the parties to get the suit land partitioned and thereby to get specific khasra numbers allotted to them as fall to their respective shares, I do not see any ground to interfere with the impugned judgments and decrees.

16. Consequently, finding no merit in this appeal, it is dismissed *in limine*, but with no order as to costs.

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18. In view of the fact that the appeal has been dismissed on merits, the issue of condonation of a delay of 23 days in filing the appeal is rendered academic and is not gone into.

25.10.2016
pk/davinder

(AMOL RATTAN SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether reportable	Yes