

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

**R.S.A No.4557 of 2015 (O&M)
Date of decision :24.08.2016**

Akhtar Hussain

..... Appellant

Versus

Ifran and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Mohd. Arshad, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 30.05.2015 passed by the learned District Judge, Mewat, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 30.04.2015 passed by the learned Addl Civil Judge (Sr. Division), Ferozepur Jhirka, has been dismissed.

2. Appellant-plaintiff has filed the suit for permanent injunction restraining the defendants-respondents from raising any construction over any portion of the suit property measuring 29 Kanals 19 Marlas as detailed and described in para no.1 of the plaint situated within the revenue estate of village Ranika, District Mewat, which is jointly owned and possessed by the parties and no partition has taken place till date. It is further averred that the defendants-respondents are bent upon to raise construction over the suit land without getting it partitioned and thus want to change the nature of the suit land. Hence the suit.

3. Respondents-defendants contested the suit on the grounds *inter alia* that an oral partition of the suit property has already taken place about 30 years back amongst the co-sahrers. In the said oral partition, the land adjoining *rasta/phirni* measuring 5 Kanal 10 Marlas comprised of Killa no. 14//2/1, 2/2 had fallen to the share of respondents-defendants no.1 and 2 wherein they have constructed the boundary wall and *tubewell* etc. with the consent of other co-sharers. As such, they have every right to raise any type of construction over the property in their possession. Thus, they pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 04.07.2014:-

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
2. Whether the suit is not maintainable in the eyes of law?OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
4. Whether the plaintiff has not come with clean hands and has concealed the true and material facts from the Court?OPD
5. Whether the plaintiff is stopped from filing the present suit by his own act and conduct?OPD
6. Whether the suit of the plaintiff is barred under Section 41 (h) of the Specific Relief Act?OPD
7. Relief.

5. On appreciating the evidence adduced by the parties and the contentions raised by their counsels, the learned trial Court dismissed the suit filed by appellant-plaintiff vide impugned judgment and decree dated 30.04.2015.

6. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff has preferred the appeal. The same was also dismissed by the learned District Judge, Mewat, vide impugned judgment and decree dated 30.05.2015. Hence this Regular Second Appeal.

7. I have heard Mr. Mohd. Arshad, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant contended that the suit property is jointly owned and possessed by the parties. No partition has taken place. He contended that the respondents-defendants have no right to raise the construction on any specific portion of the suit property without getting the same partitioned. He contended that by raising construction, defendants-respondents wants to change the nature of the land. They want to grab the valuable piece of land. Thus, he contended that the learned Courts below have wrongly dismissed the suit and appellant-plaintiff was entitled for injunction.

9. I have duly considered the aforesaid contentions.

10. Even as per the admitted case of appellant, the land in dispute is jointly owned by him and respondents-defendants. Appellant-plaintiff has not been able to show that he is in exclusive possession of any part of the suit property and defendants-respondents wants to raise the construction over that portion. DW-1 Irfan (defendant no.1) has stated that they have raised the boundary wall and *tubewell* in Killa no.14//2/1. 2/2. It is not the case of the present appellant that he is in possession of these *Killa* numbers. So, respondents wants to raise the construction in the portion of the joint property which is in their possession. The Division Bench of this Court in case **Bachan Singh Vs. Swaran Singh 2000(3) R.C.R. (Civil) 70** after taking note of various judicial pronouncements on this subject has laid down as under:-

“15. On a consideration of the judicial pronouncements on the subject, we are

of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession. (ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

As per the aforesaid ratio of law laid down by the Division Bench of this Court, mere making of construction or improvement in the joint property does not amount to the ouster of the other co-sharer. Learned counsel for the appellant has not been able to show that raising of the construction by respondents-defendants will diminish the value of the utility of the property in dispute and it will be detrimental to his interest or to the interest of any other co-sharer. So, no injunction can be issued to restrain the defendants from raising the construction in the portion of the suit property in their possession. Learned First Appellate Court has categorically mentioned that as the partition proceedings are pending, certainly the construction raised will be subject to partition. So, the aforesaid observations of the learned First Appellate Court that the

construction if any raised by defendants-respondents will be subject to partition is sufficient to take care of the rights of the appellant-plaintiff.

11. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

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

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

August 24, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No