

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 4573 of 2015 (O&M)
Date of Decision: January 29, 2016**

Harmesh Singh (deceased) through his LRs and others

... Appellants

Versu

Pritu and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. Sanjeev Pandit, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-11001-C-2015

Having heard learned counsel for the appellants and for the reasons recorded in the civil misc. application, same is allowed. Delay of 44 days in refiling the appeal is condoned.

CM-11002-C-2015

Having heard learned counsel for the appellants and for the reasons recorded in the civil misc. application, same is allowed. Delay of 11 days in filing the appeal is condoned.

RSA No. 4573 of 2015

This regular second appeal has been preferred by the appellants against the judgment and decree dated 20.10.2014 passed by learned

respondent no.1/plaintiff against the judgment and decree dated 17.08.2011 passed by learned Civil Judge (Junior Division), Dasuya, has been allowed and suit for permanent injunction has been decreed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for permanent injunction on the ground that land measuring 173 kanals 11 marlas as detailed in the head note of the plaint is jointly owned by plaintiff, defendants and other co-sharers. The defendants being head strong persons have threatened to change nature of the suit land and they have also threatened to cut and remove the trees without getting the suit land partitioned. It was further averred that defendants have already cut and removed many trees from the suit land forcibly and illegally and there is further threat that remaining trees will also be cut and removed. The plaintiff has requested the defendants many a times to admit the lawful claim of the plaintiff but defendants have not listened to him. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement and took the preliminary objection that plaintiff is estopped from filing the suit. He is neither joint owner nor in possession of the land in dispute. It is averred that defendants are exclusive owners of the land in suit according to their shares and they are enjoying the possession and have also planted various kinds of trees.

On the basis of the pleadings of the parties, the Court of first

instance framed the following issues:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether plaintiff has concealed the material facts from this court, if so its effect? OPD*
- 3. Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 17.08.2011. Against that, plaintiff preferred an appeal, which has been allowed and suit of the plaintiff was ordered to be decreed for permanent injunction restraining the defendants from changing nature of the suit property/cutting and removing the trees standing thereupon till the suit property is partitioned by metes and bounds by the lower appellate Court vide judgment and decree dated 20.10.2014. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 10 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the respondent/plaintiff failed to prove the possession over the suit property?*
- ii) Whether the ld. Appellate Court has misread and misconstrued the pleadings, evidence and documents on the record of the case while passing the judgment and decree?*
- iii) Whether a grave and manifest injustice has been caused to the appellants/defendants by passing the judgments and decrees in favour of respondent/plaintiff by decreeing the suit against the appellants/defendants?*
- iv) Whether the lower court has rightly passed the judgment and decree dated 17.08.2011 in favour of the appellants/defendants?*

- v) *Whether the appellate Court has wrongly allowed an application under Order 41 Rule 27 of CPC at appellate stage?”*

Learned counsel for the appellants contends that the plaintiff has sold the entire land and no share of the plaintiff was surviving on the date of filing the suit. Learned counsel further contends that plaintiff has not mentioned in the plaint with regard to the sale of land which he has made and this fact has been concealed. Once the person is not in possession, suit for permanent injunction is not maintainable. Learned counsel further contends that one of the witnesses i.e. PW1 – Sarwan Singh has admitted that plaintiff has sold his land.

I have heard learned counsel for the appellants and perused the record.

The lower appellate Court, after considering the evidence on record, recorded the following findings:-

“17. As during the appeal, this court has allowed an application under order 41 rule 27 CPC and jamabandi for the year 2005-06 was tendered and perusal of the same would go to show that the plaintiff is still co-sharer in the suit property. Mutation of the land belonging to Sheru Ram was sanctioned in the name of the present plaintiff on the basis of will. A perusal of the photo copy of death certificate of Sheru Ram goes to show that he died way back in the year 1982. The property belonging to Sheru Ram passed on to the appellant and his brother Joginder Singh when Sheru Ram breathed his last. So it cannot be said that appellant was not owner of the

*property at the time of filing of the suit land as he has specifically become the owner, hence document could be looked into. So this court is of the considered opinion that finding recorded by learned trial court that plaintiff is not a co-sharer cannot be sustained and as such the same is ordered to be reversed. The plaintiff is co-sharer in the suit property and as far as question of grant of injunction is concerned, law is also well settled that co-sharer cannot change the nature of the property detrimental to the interest of other co-sharers. Removing of trees from the joint property is one such acts which could definitely be said to be detrimental to the interest of other co-sharers. In case titled as **New India Construction Co. Limited and others Vs. Desh Raj and others**, reported vide 2007(1) Civil Court Cases, 801, it has been held that co-owner can seek injunction if act of another co-sharers amounts to ouster or is adverse to the interest of co-sharers who is out of possession. So even if the possession is with the other co-sharers by way of some family arrangement, still he cannot change the nature of the land detrimental to other co-sharers. In case titled as **Ram Chander Vs. Bhim Singh and others**, reported vide 2008(3) RCR(Civil), 685, Full Bench of our own Hon'ble High Court has also held that a co-sharer in separate possession of different parcels of land or in possession of specific area of the joint property possesses such property for and on behalf of other co-sharers. So this court is of the considered opinion that rights of the co-sharers will be*

protected if the suit is ordered to be decreed to the extent that trees would not be removed and nature of the suit property be not changed till the property is partitioned.”

Civil suit was filed for permanent injunction restraining the defendants, their agents, attorney from interfering in any manner, changing the nature of the suit land, cutting and removing the trees in the suit land. Perusal of jamabandi for the year 2000-01 clearly shows that the plaintiff was having share in different khewats. In the first khewat No. 58, he was having 229/2218 share and in the another khewat No. 59, he was having 1/6th share. He was also having 33/433 share in the another khewat No. 64 and 65. Besides this, plaintiff has inherited the share of Sheru which has been recorded in the jamabandi for the year 2005-06 which has been allowed as additional evidence.

The contention of the learned counsel for the appellants that the land was partitioned much earlier is rendered insignificant because they have acquired the rights after the preparation of the jamabandi for the year 2005-06. It is a new cause of action. Even if there is earlier partition between the parties, the question of possession does not arise. The defendants have sought the exclusive possession. Suit is for permanent injunction restraining the defendants from cutting and removing the trees. The co-sharer has every right to seek permanent injunction, if the other co-sharers are changing the nature of the land and removing the trees from the property in detrimental to the interests of the other co-sharers. The finding of fact has been recorded by the lower appellate court after considering the revenue record. The plaintiff has sold his land out of only two khewats i.e. 1/6th and 33/433 share, besides this he has inherited the land from Sheru.

Learned counsel for the appellants could not show that the findings recorded by the lower appellate Court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. It is settled law that this Court cannot interfere in the findings of fact recorded by the lower appellate Court on appreciation of evidence brought on record, unless the findings are perverse. No perversity has been pointed out by the learned counsel for the appellants. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine

January 29, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge