

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3421 of 2014 (O&M)

Date of Decision: October 24th, 2016

Mohar Singh & others

...Appellants

Versus

Jogender & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sandeep K. Sharma, Advocate,
for the appellants.

Mr.B.K.Bagri, Advocate,
for respondent No.1.

Mr.Abhimanyu, Advocate for
Mr.Sanjeev Kodan, Advocate,
for respondent Nos.2 to 4.

AMIT RAWAL, J. (Oral)

Appellant-defendants No.4 to 7 are aggrieved of the concurrent findings, whereby the suit of the respondent-plaintiff for possession by way of partition of the suit land, has been decreed and the land has been ordered to be partitioned by metes and bounds.

Mr.Sandeep K. Sharma, learned counsel for appellant-defendant Nos.4 to 7 submits that the appellant-defendants are in possession of the land as tenants. Report of the Tehsildar Ex.P8 reveals that the respondent-plaintiff along with defendants No.1 to 3 had purchased the property jointly from the previous owner, so the status of the appellants continues as tenants and this fact is fortified as Joginder Singh respondent-plaintiff instituted a petition under Section 9 of the Punjab Security of Land

Tenure Act, 1953 seeking ejectment. The same had been dismissed. Revision against the same was dismissed and revision against revision, i.e.. ROR Nos.14 and 15 of 2011 are stated to be pending. He further submits that the status of the defendants is of tenant as they are in possession and cannot be dispossessed owing to decree of physical possession in favour of the respondent-plaintiff. He further submits that they cannot be forcibly dispossessed or under the garb of the decree of partition except in due course of law, i.e., after drawing of the final decree as in case either the plaintiff or the defendant gets the property qua his share in occupation of tenant, he would have a remedy to seek eviction. This aspect has not been taken care of in the aforementioned judgments.

Per-contra, Mr.B.K.Bagri, learned counsel for respondent No.1 and Mr.Abhimanyu, Advocate for Mr.Sanjeev Kodan, learned counsel for respondent Nos.2 to 4 submit that as per the report of the Tehsildar Ex.P8, it has been proved on record that the possession is not of the appellants, but that of the respondent-plaintiff. Since the khata was joint, it is in this backdrop of the matter, the suit for partition was filed, though the respondent-defendant Nos.1 to 3 were joint owners. They do not dispute the filing of the eviction petition and, thus, urge this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr.Sharma, for, the report Ex.P8 of the Tehsildar reveals the possession of the *Gair Marusi* tenants. Since the respondent-plaintiff along with defendant Nos.1 to 3 have purchased property, though may be *gair marusi* at earlier point of time and now they have become owners, the question

arises for determination of the present appeal is whether the appellants-tenants can be evicted under the garb of decree of partition by metes and bounds or not. The answer is that it will be only after drawing the preliminary decree, i.e., in essence in case the property, which is in occupation of the appellant as tenants, has fallen to the share of the respondent-plaintiff, then the eviction proceedings initiated against the appellant-defendant would continue as it is, but if converse, i.e., if the ownership has fallen to the share of defendant Nos.1 to 3, they would be liable to substitute the claim in the pending ROR as the action for seeking eviction has already been initiated by one of the co-owners, but the appellant-defendants cannot be ousted in the process of preparation of the final decree by metes and bounds.

With the aforementioned observations, I am of the view that the Executing Court shall take into consideration the aforementioned facts while drawing the preliminary decree.

Appeal stands disposed of.

October 24th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No