

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

RSA No. 6280 of 2015 (O&M)

Date of Decision: 26.04.2016

Ramanand and others

.....Appellants

Vs.

Dharampal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mukesh Yadav, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (ORAL)

This appeal has been filed by the defendants in a suit filed by the respondents No.2 and 3 herein, i.e. the plaintiffs (hereinafter to be referred to as the plaintiffs), seeking permanent injunction restraining the defendants from raising construction over more than their share of the suit land, or from interfering/dispossessing the plaintiffs from their share.

The suit was dismissed by the learned Civil Judge (Junior Division), Mahendergarh, vide his judgment and decree dated 30.11.2013, but the appeal filed by the plaintiffs was allowed by the learned District Judge, Narnaul.

Hence, the present appeal against the said judgment and decree dated 17.11.2015, of the learned District Judge.

2. As per the suit filed by the two plaintiffs (with the facts being taken from the judgment of the learned Civil Judge), the

plaintiffs and proforma defendants No.8 and 9 (respondents No.3 and 4 herein), are co-sharers to the extent of a half share of agricultural land falling in Khewat No.2, Kitta No.13, measuring 55 kanals and 11 marlas, in village Jasawas, as per the 'jamabandi' (record of rights) for the year 2003-04.

Partition proceedings had been initiated by the plaintiffs in respect of the said land, before the Assistant Collector Ist Grade, wherein the defendants (present appellants) were the respondents.

It was further submitted by the plaintiffs in the suit, that the defendants were constructing over a part of the suit land, adjoining the 'phirni' (Rasta/way), without the partition being effected and despite requests to the contrary, that no construction should be raised, they were continuing to do so necessitating the institution of the suit.

3. Upon notice to them, defendants No.1 to 3, 5 and 6 (presently appellants No.1 to 3, 5 and 6) filed a written statement taking preliminary objections qua maintainability of the suit, locus standi etc., further contending on merits that the suit land had actually already been partitioned vide two different "Likhtam" (writings) dated 08.04.1983 and 27.05.1988, after which all the parties came into possession of their specific holdings, wherein the contesting defendants received a specific 'mustatil' and killa No.19//18, measuring 5 kanal 9 marlas and killa no.19//23 measuring 3 kanal 11 marlas land, thus totaling 9 kanals 0 marla. Upon that land they had got constructed a 'pucca' house,

in which they were residing, in their specific shares. Hence, it was contended that there was nothing further left to be partitioned and consequently, dismissal of the suit was prayed for.

4. The proforma defendants No.8 and 9 (presently respondents No.3 and 4), who are seen to be the brother and mother of the plaintiffs, filed a separate written statement, also stating that vide the aforesaid writings dated 08.04.1983 and 27.05.1988, the suit land was partitioned and the contesting defendants had received the aforesaid portions of land, upon which they had built their residences.

5. With no replication having been filed, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiff is entitled to the relief of injunction as prayed for by him in the plaint?
OPP
2. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the suit is time barred? OPD
5. Relief.”

The plaintiffs examined the first plaintiff, Dharampal, as PW3, one Vijaypal as PW1 and Jagram as PW2. They also tendered a photocopy of a jamabandi as Ex.P1.

The defendants examined a draftsman, Krishan Kumar, as DW1, one Braham Kumar as DW2, Hira Lal as DW3, Ram Chander as DW4, Jagmal Singh as DW5, Dhanpat Singh as DW6 and defendant No.3, Jai Singh (presently appellant No.3),

as DW7.

They also tendered documents Exs.D1 to D5 in evidence.

6. The learned Civil Judge, first entered into the question (though no specific issue in that regard was framed), as to whether the plaintiffs and defendants are co-sharers in the suit land and held that they admittedly were so, as reflected in the jamabandi (Ex.P1) for the year 2003-04; but further held that documents Mark-A to Mark-J, which were stated to have been relied upon in rebuttal, read with documents Marks D1 to D5, cumulatively show that partition proceedings had already taken place. Thus, that learned Court concluded that the relief sought was accordingly only with regard to the construction (in any case, it being only a suit seeking permanent injunction against raising such construction).

Thereafter, holding that in terms of Section 41(h) of the Specific Relief Act, 1963, since an efficacious alternative remedy of partition was available, the relief of injunction was barred.

Further, citing a judgment of a Division Bench of this Court titled as **Bachan Singh v. Swaran Singh**, (2000 (3) RCR (Civil) 70), it was further held by the learned Civil Judge that a co-owner who was not in possession of any part of the property, cannot be entitled to seek an injunction against another co-owner who has been shown to be in exclusive possession of common property, unless any act of the person in exclusive possession,

amounts to ouster of the co-owner. It was further held that merely constructing on such common property, does not amount to ouster. It was also held in that case that a co-owner can seek injunction to prevent such an act as would diminish the value or utility of the property and which is detrimental to his interest.

Citing the above, it was further found by the Civil Judge that the partition proceedings had already been decided and only an appeal was pending and as such, no relief of injunction could be granted to stall the partition proceedings. Hence, the suit was held not to be maintainable and was dismissed.

7. In the appeal filed by the plaintiffs, the learned District Judge also found that the plaintiffs and the defendants are co-sharers in the property and that even as per the admission of the plaintiffs, the defendants had constructed their houses, whereas the plaintiffs had not. It was also found that a suit for partition was pending before the SDM, Mahendergarh (the learned District Judge was obviously referring to the appeal pending before the said authority in his capacity as the Collector, the Assistant Collector Ist Grade being a Tehsildar).

However, as regards the family partition stated to have been effected vide the writing dated 08.04.1983 (Ex.DW2/B) and the writing dated 27.05.1988 (Ex.DW3/B), it was held that such a private partition is necessarily to be reflected in the revenue record and till such entry is made therein, it cannot be taken into account. For holding as above, the learned first Appellate Court relied upon a judgment of this

Court in **Darbara Singh & Ors. v. Gurdial Singh and Ors.**, (1994 (2) Latest Judicial Reports 175).

Citing the judgment of the hon'ble Supreme Court in **Maharwal Khewquaji Trust (Regd.), Faridkot v. Baldev Dass**, (2004) 8 SCC 448, learned District Judge held that in disputes of this kind, the Court should try and save the property, as also its nature and character, during the pendency of the suit as it may lead to loss or damage to the parties who may ultimately succeed, leading to multiplicity of litigation.

Another judgment of this Court in **Sukhwant Singh & Others v. Garja Singh & Ors**, (2014 (1) Latest Judicial Reports 781) was also cited in this regard.

Hence, holding that with the appeal in the partition proceedings still pending, the learned Civil Judge erred in refusing to grant injunction. Consequently, the appeal of the plaintiffs was accepted by the learned first Appellate Court and the suit decreed in their favour.

8. Before this Court, learned counsel for the appellants submits that even as per the findings of the learned lower appellate Court, the appellants, i.e. defendants in the suit, were found to have constructed a house on the land which was partitioned in the 1980s. However, the suit of the plaintiffs (respondents herein) has been decreed only on the ground that the partition proceedings were still in issue before the appellate authority, i.e. the Collector (SDM) and as such, further construction upon the suit property may create a hindrance in

such partition.

Learned counsel further submits that the suit could not have been decreed in favour of the respondents-plaintiffs, in view of the fact that they are admittedly co-sharers.

A perusal of the judgment of the learned lower appellate Court (learned District Judge, Narnaul), shows that he has not upset the findings of the learned Civil Judge, to the effect that construction is existent on the spot and in fact, he has specifically recorded that even as per the plaintiffs' own admission, construction has been made by the defendants-appellants, as already noticed. All that has been eventually held by that Court, while setting aside the decree of the learned Civil Judge, is that further construction be not made by the appellants-defendants, till the pendency of the partition proceedings. Such proceedings, as already noticed, are stated to be pending (in appeal) before the Collector, and on specific query, learned counsel for the appellants submits that there is no stay on the order of the Assistant Collector, by which the mode of partition has been determined.

In view of the above, even the contention of learned counsel that an injunction cannot lie against a co-sharer, does not hold good, as partition proceedings at least at the first stage, have been finalized as submitted before this Court. Such partition has not been stayed by the appellate revenue authority, as already noticed.

Consequently, if in terms of the partition, specific

portions of land have been given to respective co-sharers and any of the parties is aggrieved of such mode of partition, obviously their remedy lies before the competent authority, in such partition proceeding.

As regards the reasoning given for the injunction granted by the learned lower appellate Court, restraining the appellant from making further construction, during the pendency of partition proceedings, I see no error in that reasoning, it being based on the judgments cited by that Court, in an attempt to try and avoid multiplicity of litigation.

However, to clarify, it is held that the decree issued by the learned first appellate Court, would not be interpreted to mean that it binds the revenue authorities. The parties would abide by the partition effected by the competent authority in the proceedings pending there, as would reach finality before the last revenue authority or thereafter the judicial court seized of those proceedings.

In case of any delay by the revenue authorities in deciding the appeal, the appellants would naturally avail of their remedies against such delay.

With the above observations, this appeal is dismissed.

(AMOL RATTAN SINGH)
JUDGE

April 26, 2016
nitin/vcgarg