

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

**Regular Second Appeal No.4290 of 2014 (O&M)
Date of Decision: February 05, 2016.**

Lal Chand

.....APPELLANT(s).

VERSUS

Satbir Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Khurana, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This regular second appeal has been filed by appellant-plaintiff Lal Chand who filed suit seeking the relief of permanent injunction to restrain the respondents-defendants from raising any sort of construction and changing nature of the land measuring 12 kanals 19 marlas situated in village Lula Ahir, Tehsil Kosli, District Rewari without obtaining consent of all co-owners and in the alternative, a decree of mandatory injunction in case the defendants succeed in their illegal design. The suit was dismissed by learned Additional Civil Judge (Senior Division), Kosli and the appeal filed by plaintiff was also dismissed by Additional District Judge, Rewari.

2. Plaintiff claimed the suit land as joint of the parties and the defendants claimed that it has been partitioned but could not prove the same.

The defendants alleged that in the partition, parental house in 8 marlas and plot of 4½ marlas with two rooms constructed over it, was given to the plaintiff and vacant plot of 14½ marlas were given to the defendants in killa No.14/1/1, over which defendants constructed their residential houses about 22-23 years back. The level of the road was raised few years back, as a result of which, house of defendant became low lying. Defendant No.1 carried out renovation of his house to bring it at the level of the road and as per his current family requirement.

3. Both the Courts below observed that the plaintiff has admitted the existence of house of defendants on the suit land, where they are residing after the death of their father for the last about 10 years. The plaintiff also admitted the site plan of the suit property and the photographs of the houses produced on record as correct. His witness PW1 Raj Pal has also admitted that defendants are residing in the land bearing killa No.14/1/1 for the last 10 years. Even a local commissioner was appointed, who found the construction at the spot.

4. Taking note of the fact that the plaintiff had not sought the partition of the joint property and raising of construction by one of the co-owner does not amount to ouster of claim of plaintiff in the suit property, he was declined the relief of injunction as prayed for.

5. I have heard learned counsel for the appellant, who has admitted construction of the house of defendant No.1 at the spot but has tried to make out that it was raised during pendency of the suit. He has further argued that the plaintiff and his witness have simply admitted the site plan of the house

produced by the defendant and Courts below have drawn wrong conclusion

to the effect that they have admitted that the house of defendant was constructed prior to the filing of the suit. He has further argued that the suit land is agricultural land and no co-sharer is permitted to change the nature of the land without permission and consent of other cosharers.

6. On giving a careful thought to the submission of learned counsel for the appellant, I am of the opinion that in view of the facts and circumstances of the case proved on file, arguments addressed by learned counsel for the appellant carry no weight. The first Appellate Court on the basis of evidence on record, has made observations in para 14 of judgment, as follows:-

“However, a perusal of cross-examination of PW1 Rajpal would show that he has stated that Satbir and Sube Singh are residing in kila No.14/1/1. He has also admitted that the defendants are residing in the same for the last 10 years. In a specific question put to him, he has stated that Satbir had constructed different portions in the suit property for his two sons. The plaintiff Lalchand as PW2 has also stated that after the death of his father, Sube Singh and Satbir are residing in the suit property. He has admitted the site plan produced by defendants to be correct. He has also admitted that the houses which have been shown in the site plan produced by the defendants to be correct.”

7. A local commissioner was also appointed in this case, who visited the spot and gave his report Ex.DW4/1. On perusal of the report of the local commissioner, the first Appellate Court observed as follows:-

“A perusal of report of LC Ex.DW4/1 would show that in the rough site plan Ex.DW4/4 prepared by

him, at mark-B, there is house of Satbir Singh consisting of one shop, five rooms, two kitchen, two galleries, one latrine, bathroom and one chowk. Thus, from the statement of plaintiff himself and Rajpal PW1, a witness examined by plaintiff and report of local commission, it is proved that the defendants are in exclusive possession of the suit property and they had raised construction in the suit property.”

8. The first Appellate Court has rightly observed that mere making construction or improvement in the suit property, does not amount of ouster and remedy for the cosharer is to seek partition and not the relief of injunction. It was also found that there are houses on the suit property and it is not an agricultural land.

9. Learned counsel for the appellant could not make out that the above observations of the Courts below are not based on evidence on record or on wrong appreciation or misreading of the evidence on record.

10. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

11. No substantial question of law requiring determination arises in this appeal, which has no merits.

12. Dismissed.

February 05, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE