

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

107

Regular Second Appeal No.4565 of 2014 (O&M)
Date of Decision: April 07, 2016

Sita Ram and others

...Appellants

Versus

Lala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. N.D. Achint, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10577-C of 2014

Prayer in this application is for leading additional evidence by tendering in evidence certified copy of the judgment passed in Civil Appeal No.48 of 2013 decided on 09.12.2013 by the Additional District Judge, Gurgaon.

It has been asserted that the judgment rendered in Civil Appeal No.48 of 2013 could not have been produced before the Courts below, wherein the suit was preferred against Phalia son of Nobat, where again an injunction was prayed for restraining the said respondent from changing the nature of the land and raising construction thereof which has been initially dismissed by the trial Court, appeal against which has been allowed, where the injunction as prayed for has been granted and decree passed.

For the reasons mentioned in the application, the said application cannot be accepted for the simple reason that the parties to the suit are not the same and the same does not confer any further benefit upon the appellants except for the benefit qua the respondent-defendant therein. The application, therefore, stands dismissed.

RSA No.4565 of 2014 (O&M)

Challenge in this appeal is to the judgment and decree dated 30.03.2013 passed by the Civil Judge (Junior Division), Gurgaon, whereby the suit for permanent injunction preferred by the appellants-plaintiffs against the respondents-defendants restraining them from raising any construction or changing the nature of the land prior to the partition of the suit land as it is jointly owned and possessed by them, stands dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Gurgaon, on 27.05.2014.

2. It is the contention of learned counsel for the appellants that the Courts below have failed to appreciate that the respondents-defendants are making efforts to raise construction on the land which admittedly is a joint one. He contends that if the nature of the land is changed, the very purpose for partition proceedings which have been initiated and pending as of date, would be frustrated as the right of claiming a particular set of land would be diminished. He, thus, contends that injunction as prayed for should have been granted by the Courts below.

3. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgments but do not find myself in agreement with him, especially in the light of the Full Bench judgment of this Court in *Bhartu Versus Ram Sarup*, 1981 PLJ 204 as also *Sant Ram Nagina Ram Versus Daya Ram Nagina Ram*, AIR 1961 Punjab 528, the details whereof has been mentioned by the Lower Appellate Court in para 14 of its judgment. Further judgments which have been relied upon in the said judgment also reflect the correct position

as it exists in law.

4. The findings as recorded by the Courts below being based upon proper appreciation of the pleadings and the evidence brought on record as also the law applicable to the plea, as has been taken in the present case by the appellants, cannot be faulted with.

5. No other point has been argued by the counsel for the appellants.

6. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and there being no illegality in the judgments impugned, interference by this Court is not called for.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

April 07, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE