

237

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4975-2014 (O&M)
Date of decision : 12.05.2016

Buta Singh @ Nishan Singh

... Appellant

Versus

Amar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arvind Rajotia, Advocate
for the appellant.

Mr. Ashok Sharma, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit for injunction on behalf of the co-sharers in respect of the house, in dispute, has been decreed till the respondent-plaintiff seeks the partition of the property on the premise that the plaintiff has proved his exclusive possession.

Mr. Arvind Rajotia, learned counsel appearing on behalf of the appellant-defendant submits that it is a settled law that the suit for injunction at the behest of the co-sharers, in the absence of the exclusive possession, is not

maintainable. The trial Court relying upon the evidence and the case law, dismissed the suit, but the lower Appellate Court without adverting to any document, gave a finding that the respondent-plaintiff was in exclusive possession and thus, decreed the suit till the plaintiff avails the remedy of partition. He submits that the aforementioned findings are not sustainable in the eyes of law as the judgment and decree of the lower Appellate Court is not only perverse, much less, fallacious as no documentary evidence has been placed on record, at the behest of the plaintiff to show the exclusive possession, thus, urges this Court to formulate the following substantial question of law arises for determination:-

1. Whether in the absence of exclusive possession, simpliciter suit at the behest of the co-sharer seeking injunction is maintainable or not?
2. Whether the judgment and decree of the lower Appellate suffers from the illegality and perversity?

Mr. Ashok Sharma, learned counsel appearing on behalf of the respondent-plaintiff submits that the oral evidence brought on record showed exclusive possession of the respondent-plaintiff, on the basis of which, the lower Appellate Court formed an opinion qua exclusive possession, whereas, on the contrary, the appellant-defendant did not lead any evidence to rebut the evidence of the respondent-plaintiff and therefore, the suit has rightly been decreed, thus, urges this Court for affirming the findings under challenge.

He further submits that his client is not adverse to seeking the partition of the property, for, the property as per the testamentary document, has fallen to the share in the ratio of 50% each.

I have heard the learned counsel for the parties and appraised the

paper book and of the view that it is a settled law that the respondent-plaintiff has to stand on his own legs by leading evidence, direct and cogent quashing the Court to form an opinion that as to whether the plaintiff has laid a foundation for claiming the injunction proving on record the exclusive possession. On going through the judgment and decree of the lower Appellate Court, there is no reference to any such document, yet the lower Appellate Court formed the opinion that the respondent-plaintiff is in exclusive possession. It is matter of record that by virtue of the Will dated 15.07.1996 of Shingara Singh, the property has fallen to the share of the parties in the ratio of 50% each. Shingara Singh died on 07.08.2002. In my view, the ratio culled out in the judgment rendered by the Full Bench of this Court and followed by the Division Bench of this Court in “*Bhartu Versus Ram Sarup*”, 1981 PLJ 204, and “*Bachan Singh Versus Swaran Singh*”, 2000 (3) RCR (Civil) 70 , squarely applies to the facts and circumstances of the present case, for, the plaintiff has miserably failed to prove exclusive possession.

For the foregoing reason, the impugned judgment and decree of the lower Appellate Court is hereby set aside. The substantial questions of law as noticed above are answered in favour of the appellant-defendant and against the respondent-plaintiff. The suit stands dismissed.

However, this view of mine shall not preclude the respondent-plaintiff to file the suit for partition and seek interim stay.

Resultantly, the appeal stands allowed.

12.05.2016
yogesh

(AMIT RAWAL)
JUDGE

