

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

R.S.A No. 725 of 2014 (O&M)

Date of decision :22.01.2016

M/ s Delhi Towers Limited and others

..... Appellants

Versus

Jai Chand

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Adarsh Jain, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 28.09.2013 passed by the learned Additional District Judge, Gurgaon, vide which the appeal preferred against the judgment and decree dated 19.01.2013, passed by the learned Civil Judge (Jr. Division), Gurgaon has been dismissed.

2. The plaintiff-company has filed the suit for permanent injunction restraining the defendant, his accomplices, agents and other persons from taking the forcible possession, dispossessing the plaintiffs and causing loss to the club and office buildings and interfering in the peaceful use and enjoyment thereof by the plaintiffs by locking the said buildings, obstructing the day to day running of club and offices.

3. The plaintiff-company has purchased considerable portion of land situated in the revenue estate of village Raisina, Tehsil Sohna, District Gurgaon more than 15 years back. After the said purchase, they leveled the land, craved out the roads and developed the area under the

name “Aravali Retreat”. Various farm houses were constructed by them which were separated by means of barbed wire, 'pakka' boundary walls and some of them have been sold by the plaintiffs to the third parties. The major portion of the land purchased by the plaintiff-company is comprised of Khewat No. 57 measuring 2445 kanals and 8 Marlas. They have constructed the club building and office complex in rectangle no. 50, Killa No. 4, 5, 6, 16, 25 and rectangle No. 51, Killa No. 1, 10, 11, 20, 21 about 15 years back. They have constructed these buildings openly, peacefully and with the knowledge of all the concerned and none had ever objected to these acts of the plaintiffs. They have also obtained the electric connections and telephone numbers. It is further pleaded that defendant is threatening to forcibly lock their club and office buildings and is adamant to interfere in the day to day working of the club. He wants to forcibly dispossess the plaintiffs on the ground that he has purchased 978/ 48908 share in the joint land of rectangle no. 50 and 51 from one Brijesh son of Hem Singh vide sale deed dated 06.02.2007. Hence this suit.

4. Defendant-respondent contested the suit on the grounds that the plaintiffs were not entitled to raise the construction without the consent of other co-sharers or without getting the land partitioned from the Competent Authority. The plaintiff had raised the illegal construction without seeking the permission from the other co-sharers as well as District Town Planner (Enforcement), Gurgaon (for short 'D.T.P') and the plaintiffs are habitual land grabbers. The land in dispute is still joint and un-partitioned. The plaintiffs could not have raised the structures alleged

by them without getting the Change of Land User (for short 'CLU') by the Government of Haryana and HUDA department. Few constructions raised by them were demolished by DTP (Enforcement), Gurgaon. The respondent-defendant has also denied the existence of any club and office buildings. The possession of the plaintiffs on any specific portion of the joint land was also denied.

5. Plaintiffs filed the replication refuting the stand of the defendant and reiterated the averments of the plaint. From the pleadings of the parties, the following issues were framed on 27.05.2008:-

1. Whether the suit has been instituted through duly authorised person as alleged?OPP
2. Whether plaintiffs are in exclusive possession of the land detailed in para no. 4 of the plaint shown in red colour in the site plan attached with the plaint and the defendant has no right to interfere in the possession of the plaintiffs thereupon?OPP
3. Whether the plaintiffs are estopped from filing the present suit, by their own act, conduct, acquiescence and laches etc?OPD
4. Whether the plaintiffs have no cause of action to file the present suit?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD
6. Whether the suit is time barred?OPD
7. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD
8. Whether the civil court has no jurisdiction to try and decide the present suit?OPD
9. Whether the suit is not maintainable in the present form?OPD
10. Relief.

6. On appreciating the evidence and material brought on record, the learned trial Court has dismissed the suit filed by the plaintiffs vide impugned judgment and decree dated 19.01.2013. Aggrieved with the

aforesaid judgment and decree, the appellant preferred the appeal, which was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 28.09.2013. Hence this Regular Second Appeal.

7. I have heard Mr. Adarsh Jain, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellants contended that plaintiffs-appellants is in exclusive possession of the specific portion of the suit land for the last more than 15 years. He contended that this portion of the land was developed by the plaintiffs. They have constructed club building and office complex on the land comprised in rectangle nos. 50, Killa No. 4, 5, 6, 16, 25 and rectangle no.51, Killa Nos. 1, 10, 11, 20 and 21 about 15 years back. He further contended that the club facilities have been provided by the plaintiffs to the allottees of the farm houses developed by them. He contended that from the statement of PW-2 G. N. Bashistha (wrongly mentioned as PW-1), the exclusive possession of the plaintiffs over the site in dispute is fully established. He further contended that even the copy of jamabandi Ex.P-43 for the year 2000-2001 shows the existence of roads, farm houses in the suit land. Thus, he contended that it is established that the plaintiffs-company is in exclusive possession of the suit property. So, defendant has no right to interfere in the possession of the plaintiffs over the suit land and to dispossess the plaintiffs from the suit property or cause any obstructions in the user of the suit property. Thus, the plaintiffs-appellants are entitled for the relief of permanent injunction.

9. I have duly considered the aforesaid contentions.

10. This Regular Second Appeal has been preferred against the concurrent findings of facts recorded by both the learned Courts below. The law is well settled that the scope of interference with the concurrent findings of fact while exercising the powers under Section 100 of the Code of Civil Procedure, 1908 is very limited. It is only permissible where the Courts below misdirected themselves in appreciating the question of law, the onus was placed on the wrong party, the material or relevant evidence was not considered, which if, considered would have led to an opposite conclusion and that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence, which, if, omitted would have led to the opposite conclusion and finally that the judgments passed by the Courts below are perverse. It is also the settled principle of law that in Regular Second Appeal, the High Court cannot indulge in the task of re-appreciating the evidence. In view of the aforesaid principles of law, we have to examine the case in hand.

11. In order to establish the exclusive possession of the plaintiffs-company over the specific portion of the land, learned counsel for the appellants has relied upon the oral statement of PW G.N.Bashistha. The oral evidence cannot establish the exclusive possession. The land in question is situated in the revenue estate and is subject to the revenue record. The oral statement cannot override the revenue record.

12. The plaintiffs has placed on file the site plan, telephone bills,

electricity bills and photographs. All these documents have been elaborately discussed by the learned First Appellate Court with the following observations:-

“The plaintiffs have examined Kanshi Ram Dahiya Pw-1 who has proved site plan Ex.P-1 but admittedly Kanshi Ram Dahiya (PW1) was not a revenue official and he has not demarcated the land therefore he could not vouchsafe that the site plan pertains to area Rect. No.50 and 51. Similarly, photographs do not prove that the same are of land Rect. No. 50 and 51 of Khewat No. 57. Similar is the case with electricity bills and the telephone connection because these bills do not in any way connect that these connections have been obtained in the land of Khewat No. 57, Rect. No. 50 and 51.”

The aforesaid observations of the learned First Appellate Court are based on sound reasoning's and there is no reason to differ with that. Thus, the documents like site plan, telephone bills, electricity bills and photographs cannot establish the exclusive possession of the plaintiffs on the specific portion of the joint land.

13. The land in dispute is comprised of Khewat No. 57. Ex.P-43 is the copy of jamabandi for the year 2000-2001 with respect to this Khewat, which shows that there are various co-sharers in this Khewat. Jai Chand-defendant is also one of the co-sharer. In the column of cultivation, the land has been shown to be in joint possession of all the co-owners. Thus, as per the revenue record, all the co-sharers have been shown to be in joint possession of the land comprised in Khewat No. 57. Mere, reference of some farm houses and roads in the jamabandi will not establish the exclusive possession of the plaintiffs as the land in dispute has still been recorded to be in joint possession of all the co-sharers. Thus, there is no escape from the conclusion that defendant-respondent

Jai Chand is also a co-sharer in the suit property.

14. It is the settled principle of law that no injunction can be granted against the co-sharer. The only efficacious remedy available to a co-sharer is to seek the partition of the joint land. To support this view reference can be made to cases **Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karalhe, 2002(9) SCC 608, Virendra Kumar Vs. Additional District Judge Court No.1, Kannauj and others 2014(2) CivCC 166 and Shri Krishan Vs. Ramesh 2015(1)ICC 239**. In view of the consistent rule of law laid down in the cases referred above, the plaintiffs-appellants are not entitled for the relief of permanent injunction against defendant-respondent Jai Chand, a co-sharer in the joint land. Thus, I do not find that the approach of the learned Courts below is perverse or they had misdirected or misread the evidence to call for any interference by this Court while exercising the limited jurisdiction under Section 100 CPC.

15. Thus, no question of law, much less, the substantial question of law as claimed by the appellants arises in the present appeal.

16. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 22, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**