

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

R.S.A No.865 of 2014 (O&M)

Date of decision :16.03.2016

Kaushalya Devi

..... Appellant

Versus

Ruldu Ram

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Udey Veer Singh, Advocate
for Mr. Pratap Singh, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 20.11.2013 passed by the learned Additional District Judge, Kaithal, vide which the appeal filed by appellant-defendant Kaushalya Devi against the judgment and decree dated 11.05.2011 passed by the learned Civil Judge (Jr. Division), Kaithal, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent Ruldu Ram filed the suit for permanent injunction against the appellant-defendant restraining her from alienating the specific portion and specific killa numbers out of the suit land measuring 335 Kanals 01 Marla detailed and described in para no.1 of the plaint situated in the revenue estate of Village Kalayat, Tehsil Kalayat, District Kaithal.

4. As per the case of the plaintiff-respondent, he and appellant-

defendant are co-sharer in the suit land, which has not been partitioned by metes and bounds. The defendant-appellant is threatening to alienate the land comprised of Rect. No. 222 Killa Nos.8 and 9, rect. No.221 Killa No.10/1 for which she has no legal right.

5. The suit has been contested by the appellant-defendant on the plea that the suit land was already partitioned between the co-sharers. She is in actual, physical and cultivating possession of the land comprised of rect. No.222 killa nos. 8 and 9 and rect. no. 221 killa no.10 min, measuring 14 Kanals. The exclusive possession of the appellant-defendant shown in the khasra girdawri. As such, she has every right to alienate the specific portion/killal numbers.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 05.06.2008:-

1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent restraining her from alienating her share out of the suit land by way of specific portion/killal number till the suit land is partitioned by metes and bounds. The appeal filed by the appellant-defendant was dismissed by the learned First Appellate Court.

Hence this Regular Second Appeal.

8. I have heard Mr. Udey Veer Singh, Advocate for Mr. Pratap Singh, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the suit land was already partitioned between the co-sharers. The appellant-defendant is in exclusive possession of the land comprised of rect. no. 222 killa nos. 8 and 9 and rect. no. 221 killa no.10/1. He further contended that as the partition has already taken place between the co-sharers, so the plaintiff-respondent has no right to seek any injunction against the appellant to restrain her to alienate the specific killa numbers.

10. I have duly considered the aforesaid contentions.

11. The plea raised by learned counsel for the appellant that partition of the land has already taken place between the co-sharers is not supported from the revenue record. As per the observations of the learned Courts below, copy of the jamabandies Ex.P-1 for the year 2000-2001 and EX.D-1 for the year 2005-2006 reveals that the suit land has not been partitioned. DW-1 Shiv Kumar, the son of appellant has categorically admitted in the cross-examination that his mother-Kaushalya Devi is a co-sharer in the suit land measuring 335 Kanals. He further categorically admitted that the suit land has not been partitioned till date. So, there is no escape from the conclusion that the suit land is the joint land of the parties. Both of them are co-sharers and no partition of the suit land as alleged by the appellant has taken place.

12. There is no dispute with the proposition of law that every co-sharer has a right in every inch of the joint land. A co-sharer in possession of a specific portion of the joint land is deemed to be in possession on behalf of all the co-sharers. His possession over every piece of land shall be considered to be joint with the other co-sharers. The possession of a co-sharer generally does not constitute the ouster of the other co-sharer and every co-sharer has a right to use the joint property in a husband like manner.

13. There is no dispute with the legal position that a co-sharer cannot alienate the specific portion/killla number out of the joint land without getting the same legally partitioned. However, he can only sell/alienate his/her share in the joint land. Learned counsel for the appellant has not been able to dispute this legal position.

14. Plaintiff-respondent has sought the relief of injunction restraining the defendant from alienating the specific portion/killla number out of the joint land without getting it legally partitioned and the suit filed by him to this effect has been decreed. I have no reason to differ with the well reasoned findings recorded by the learned Courts below, which do not warrant any interference by this Court in the Regular Second Appeal.

15. Consequently, the present appeal having no merits, is hereby dismissed, with no orders as to costs.

March 16, 2016

s.khan

(DARSHAN SINGH)
JUDGE