

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2234 of 2016 (O&M)

Date of decision: 22.05.2017

Ram Rattan and others

... Appellants

Vs.

Gurmail Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ravish Bansal, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the learned trial Court decreed the suit for permanent injunction filed by the plaintiff-respondent, vide its impugned judgment and decree dated 20.01.2015 and first appeal of the defendants was also dismissed by the learned District Judge vide impugned judgment and decree dated 07.05.2015.

Brief facts of the case, as noticed by learned first appellate Court in paras 3 and 4 of its impugned judgment, are that the plaintiff sought permanent injunction restraining the defendants from raising any construction over the land measuring 2 kanals 10 marlas bearing Khewat No.213, Khatoni No.574, Khasra No.833/2-10 situated within the revenue estate of Village Gumti Khurd, Tehsil Jaitu without effecting partition on any specific or valuable part of the land in dispute and further restraining the defendants from changing the nature

of the suit land from agricultural to non-agricultural in any manner illegally, forcibly and without due course of law. The facts of the suit as mentioned in the plaint are that the plaintiff and the defendants were co-sharers in possession of the suit land in the entire khata. Till date, there was no partition of whole of the khata and suit land was still joint. The defendants claimed to have purchased the suit land from Ashok Kumar, Partap Singh, vendees from Chetan Dev son of Des Raj. The land in dispute was Nehri in nature and was agricultural one. The defendants became co-sharers and had no right to raise the construction over the specific part and valuable part of the suit land and to change the nature of the same, without effecting partition of the suit land. The defendants threatened to raise construction over the specific part of the suit land and to change the nature of the suit land without any partition illegally and forcibly and without due course of law, to which the defendants had no right. One day prior to the filing of the suit, the defendants came at the spot and collected the material for raising construction illegally, forcibly and without due course of law, but their efforts were foiled with the intervention of the respectables. The plaintiff requested many a times to the defendants not to raise the construction and not to change the nature of the suit land and to admit the claim of the plaintiff, but to no effect. So, the plaintiff filed the suit for permanent injunction for restraining the defendants from raising any construction over the suit land and further restraining the defendants from changing the nature of the suit land from agricultural to non-agricultural in any manner illegally, forcibly and without due course of law.

All the defendants appeared and filed joint written statement. In their joint written statement, defendants took preliminary objections that the suit

in the present form is not maintainable; that the plaintiff had no locus-standi to file the present suit, as he had sold the land in dispute measuring 2 kanals and this land had been sold for the third time with specifications mentioning three dimensions with measurement and that the suit had been filed with the malafide intention and without ulterior motive to harass the defendants unnecessarily.

Replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues: -

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 to file the present suit? OPD.
4. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has proved his case, by leading cogent and convincing evidence. Accordingly, suit for permanent injunction was decreed by the learned trial Court vide impugned judgment and decree dated 20.01.2015. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned District Judge vide impugned judgment and decree dated 07.05.2015. Hence this regular second appeal at the hands of the defendants.

Heard learned counsel for the appellant.

Facts are hardly in dispute. Both the parties to this unwarranted litigation are co-sharers in the joint and unpartitioned suit property. Ownership of all the parties to the extent of their share is also not in dispute. When the defendants wanted to raise construction over the piece of land in their possession without getting the joint and unpartitioned suit land partitioned by metes and bounds, plaintiff apprehended serious prejudice to his rights and approached the learned Civil Court by filing the suit for permanent injunction. Rightly following the law laid down by two Full Benches of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and **Ram Chander Vs. Bhim Singh and others, 2008 (3) RCR (Civil) 685**, the learned trial Court decreed the suit filed by the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned trial Court as well as the learned first appellate Court were well within jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

When confronted to point out any practical difficulty in getting the unpartitioned suit land partitioned before raising construction, learned counsel for the appellants had no answer and rightly so, it being a matter of record. As noticed hereinabove, since ownership of the parties to this litigation, to the extent of their share has never been in dispute, appellants shall be entitled to raise construction but only after getting the joint suit land partitioned by metes and bounds and thereafter, they would be at liberty to raise construction on the piece of land, which would come to their share. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by learned District Judge in para 17 of his impugned judgment, which deserve to be noticed here, read as under: -

“The plaintiff has sought permanent injunction restraining the defendants from raising any construction over the land measuring 2 kanals 10 marlas bearing Khewat No.213, Khatoni No.574, Khasra No.833(2-10) situated within the revenue estate of Village Gumti Khurd and also further restraining the defendants from changing the nature of the suit land from agricultural to non-agricultural in any manner illegally, forcibly and without due course of law. The land in question is claimed to have been sold for the third time to the defendants. But, however, the original sale deeds have not been produced upon the file. There are only photocopies of the sale deeds. Photocopies of the sale deeds cannot be relied upon. The plaintiff is recorded as a co-sharer in the jamabandi for the year 2005-06 Ex.P1. The presumption of truth is attached to the jamabandi, unless rebutted. Testimonies of the aforesaid three witnesses of the defendants are not sufficient to rebut the presumption attached to the jamabandi. Further more, the defendants have never filed any application for correction of the revenue record or any suit to get the revenue record corrected. Even if, for the sake of arguments, the contention of the defendants that they have purchased 2 kanals of the land is taken to be

*correct, even then, it cannot be said that the plaintiff has lost interest in the whole of the land, as he is a co-sharer in the joint khata, which has still not been partitioned and the plaintiff has not sold whole of his share from the joint khata. Regarding this, I find support from **2008 (3) RCR (Civil) 685 Ram Chander Versus Bhim Singh and others of the Hon'ble Punjab and Haryana High Court**, cited above. Perusal of the jamabandi also reveals that the land is actually measuring 2 kanals 10 marlas. The plaintiff has proved himself to be the co-sharer in the joint khata from which he sold portion of the land and not the entire land. Even if, the plaintiff has sold 2 kanals of the land, still he is owner of 10 marlas of the land, which cannot be overlooked. The defendants cannot raise construction on any specific portion of the land and cannot change the nature of the land, unless the land is partitioned. Regarding this, I find support from **2014 (2) Law Herald 1281 Aarlia Builders and Developers Private Limited Versus Sukhda Promoters Private Limited and others & 2002 (3) PLR, 702 Pritam Singh and others Versus Chanan Singh and others of the Hon'ble Punjab and Haryana High Court**, cited above. The defendants have failed to prove that the plaintiff has lost his right in the suit land. So when a vendee has become a co-sharer, he cannot change the nature of the land without getting it partitioned. Plaintiff being the co-sharer is entitled to the equitable relief of injunction to protect the suit land, so that its nature is not changed by the other co-sharer. Thus, the findings of the learned*

trial Court on all the issues do not call for any interference and the same are hereby affirmed. Resultantly, the appeal sans merit and the same is hereby dismissed with costs.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the findings recorded by both the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure at the hands of this Court. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

22.05.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No