

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

(118)

**RSA-3172-2016 (O&M)
Decided on: July 13, 2017.**

Union of India and others

.... Appellants

Versus

Gurmoj Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Vivek Chauhan, Advocate, for the appellants.

Mr. H.S. Baath, Advocate, for contesting respondent-plaintiffs.

Mr. J.S. Dhaliwal, Advocate, for proforma respondents.

M.M.S. BEDI, J (ORAL)

This is defendant's appeal against the judgment and decree of the lower Appellate Court, decreeing the suit of the plaintiff-respondents for possession of the land regarding a property which was purchased by the plaintiffs vide sale deed dated 04.08.1992 along with proforma defendants No. 4 to 13. The defendant-appellants had taken one Haveli built up on the property in dispute on lease. The property in dispute had been acquired vide notification under Section 4 read with Section 6 of the Land Acquisition Act but the plaintiff-respondents along with others had challenged the said notification in a writ petition. The acquisition proceedings had been quashed. Thereafter, the plaintiff-respondents had issued notice dated 27.05.2011 to the defendant-appellants to pay sum of Rs.10,000/- per month for use and occupation of the property. The defendant-appellants having not vacated the premises, suit for possession was filed for delivery of vacant possession and for payment of money for use and occupation. The defendant-appellants had challenging the sale deed in favour of the plaintiff-respondents claiming that

sale deed dated 04.08.1992 was not legal and not binding on the defendant-appellants. The trial Court had dismissed the suit of the plaintiff-respondents holding that the plaintiffs being co-owners along with proforma defendants of 30 kanals 15 marlas, would not be entitled to specific portion of the property before getting the property partitioned. The said judgment of the trial Court was set aside by the lower Appellate Court holding that all the co-sharers have been impleaded as co-defendants with defendants No. 1 to 3, as such the suit was maintainable as the other co-defendants had not challenged the claim of the plaintiff-respondents.

The main contention of the learned counsel for the defendant-appellants is that a decree for possession in favour of co-owners cannot be passed and that such a decree will not be executable as the co-owned property unless and until partitioned by metes and bounds, will remain a joint property and co-owners in joint possession of the same, are not entitled to seek possession of specific share.

Learned counsel for the proforma respondents has not contested the appeal and has informed that other co-sharers, who are in possession of the remaining co-owned land, have got no objection in case the decree passed in favour of the plaintiff-respondents, is considered to be decree even for joint possession.

I have heard learned counsel for the appellants as well as learned counsel for the contesting respondents and I am of the opinion that the plaintiff-respondents have filed a suit only pertaining to land measuring 10 kanals 2 marlas which is part of total 93 kanals 7 marlas of land.

Since all the co-sharers are impleaded as party and the other co-sharers have not objected to delivery of possession to the plaintiff-respondents

and have not contested the suit of the plaintiff-respondents, the suit of the plaintiff-respondents could not have been dismissed merely on the ground that they are not entitled to seek possession. Even otherwise a decree for joint possession can always be obtained regarding the immovable property. Such a decree passed by the lower Appellate Court cannot be said to be un-executable or a nullity. Even if it would have been a decree of joint possession, the same could be executed under Order 21 Rule 35 (2) CPC.

I do not find any force in the contention of learned counsel for the appellants regarding absence of locus standi of plaintiff-respondents being co-sharers not in possession as the plaintiff-respondents have impleaded all the other co-sharer as proforma defendants and none of the proforma defendant-respondents (co-sharers) has come forward to oppose the claim of the plaintiff-respondents as they are satisfied with the possession of the remaining property.

The plaintiff-respondents could always, in the capacity as co-owners, seek possession especially when other co-owners have got no objection to the same.

In view of said circumstances, I do not find any ground to interfere in the decree of possession passed in favour of the plaintiff-respondents.

The appeal is dismissed.

(M.M.S. BEDI)
JUDGE

July 13, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No