

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

**RSA No.2595 of 2015 (O&M)
Date of decision: 04.09.2017**

Surinder Singh and another

... Appellants

Vs.

Bhupinder Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against both the impugned judgments and decrees, whereby the learned Courts below recorded their concurrent findings of facts, dismissing their suit for permanent injunction, plaintiffs have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by learned first appellate Court in para 2 of the impugned judgment, are that the plaintiffs were owners in possession of the land in dispute by virtue of sale deed along with boundaries and exchange deed. The mutation has also been sanctioned in the name of plaintiffs as per their share. The plaintiffs used to sow the seasonable crops from time to time over the land in dispute. On 24.11.2017, defendants along with some persons came in the land in dispute and started demolishing the crop

and assets lying on the land in dispute forcibly and illegally but with the intervention of respectables, they failed to fulfill their illegal desires. After that incident, the plaintiffs contacted the defendants and requested them not to take the law in their hands but they remained adamant.

Defendants were put to notice. They appeared and filed their joint contesting written statement, raising more than one preliminary objections. It is pertinent to note here that both the defendants filed their separate but contesting written statements. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether plaintiffs are entitled to permanent injunction as prayed for? OPP
2. Whether suit is bad for non joinder and mis joinder of necessary parties? OPD
3. Whether plaintiffs have no locus standi to file this suit? OPD
4. Whether plaint does not disclose the cause of action? OPD
5. Whether plaintiffs have not come to the Court with clean hands? OPD
6. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought 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 plaintiffs have failed to prove their pleaded case for want of cogent and sufficient evidence. Accordingly, suit for permanent injunction was dismissed by the learned trial Court vide its judgment and decree dated 25.01.2014.

Plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 28.11.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

The very first and basic ingredient for the plaintiffs-appellants, so as to prove their case for permanent injunction, was that they were supposed to establish their physical possession over the suit land. However, a combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that plaintiffs-appellants miserably failed to establish their possession over the suit land. In such a situation, plaintiffs were bound to fail. That is what has been held by both the learned Courts below. Having said that, this Court feels no hesitation to conclude that learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Appellants, being the plaintiffs, onus was on them to prove their case as per their pleadings. Plaintiffs-appellants failed to prove their case by bringing on record cogent and convincing evidence. On the other hand, defendants duly established on record their physical possession over the suit property by bringing on record their documentary as well as oral evidence, which was rightly found sufficient to accept the pleaded and proved case of the defendants. Under these undisputed 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, the learned first

appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 16 and 17 of the impugned judgment, which deserve to be noticed here, read as under: -

“After considering the respective case of the parties, in the light of evidence on record oral as well as documentary evidence and impugned judgment, this Court has found that jamabandi proved on record of the year 2010-11 Ex.P12 even relied upon by the appellant-plaintiff shows the appellant-plaintiff and his sons as owners in the ownership column of the jamabandi and the name of the respondents-defendants are shown in the cultivation column and further Ex.P1 sale deed executed in favour of appellant-plaintiff the recital of which though shows that possession of the property was handed over to the appellant-plaintiff despite that appellant-plaintiff remained totally failed to bring on record and to prove his exclusive possession over the property in dispute by any cogent, convincing and clinching evidence. This Court is further of the opinion that on the other hand respondents-defendants in addition to show in possession in the column of jamabandi Ex.P12 proved their possession by way of documentary evidence. Further, respondents-defendants also proved on record their possession over the property in dispute by examining DW6 Tirath Ram who has proved on record before the learned trial Court that one electric connection installed in favour of

respondents-defendants by proving document evidence Ex.DW6/1 and Ex.DW6/2. Furthermore the respondents-defendants by proving on record an application regarding issuance of water supply connection in favour of respondents-defendants by proving on record an application Ex.DW4/A. This has further found that the respondents-defendants are also proved on record as co-owners in the property as per sale deed Ex.D2. Hence the respondents-defendants are proved to be co-owners on the property in dispute. This Court has further found that from the site plan placed on record, the property cannot be sufficiently identified as alleged by the appellant-plaintiff and also the area in which the property is located is residential one. In this manner the appellant-plaintiff remained totally failed to prove on record his exclusive possession over the property in dispute. From the above proved evidence on record, this Court is of the opinion that mere mentioning of handing over possession in the sale deed Ex.P1 does not prove the appellant-plaintiff to be in exclusive possession over the property in dispute in the absence of other cogent and convincing evidence on record specially in such a case where the respondents-defendants have proved their exclusive possession by way of documentary evidence as discussed above.

This Court is further of the opinion that it is also settled law that co-sharer cannot be restrained from enjoying possession over the property at the instance of another co-sharer except some exceptions and the case of the appellant-plaintiff does not fall in

such exceptions. This Court has further found that the appellant-plaintiff has failed to point out as to which 18 marlas he is in possession out of the total khasra numbers as alleged in his case and when the respondents-defendants are found to be co-sharers in the property in dispute and the appellant-plaintiff remained failed to prove their exclusive possession over the property in dispute, then no injunction can be granted against the co-sharer rather the efficacious remedy is available for the appellant-plaintiff was to file suit for partition not the present suit for permanent injunction but the same remedy which was available to the appellant-plaintiff to file the suit for partition has not been availed by the appellant-plaintiff. Hence, in view of above discussion, the appellant-plaintiff is not entitled to grant of relief for permanent injunction.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees passed by 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 at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. 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 since no illegality and perversity has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The regular second appeal having been found wholly misconceived, bereft of merit and without any substance, 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.

04.09.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No