

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

**RSA No.2716 of 2015 (O&M)
Date of decision: 05.09.2017**

Sukhwinder Kaur and another

... Appellants

Vs.

Swaran Kaur @ Sharan Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.V.S. Chugh, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants No.1 and 2 are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction filed by the plaintiffs-respondents was decreed by the learned trial Court vide its impugned judgment and decree dated 02.09.2013 and first appeal of the defendants was also dismissed by the learned District Judge vide impugned judgment and decree dated 03.11.2014, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first appellate Court in para 3 of its impugned judgment, are that respondent-plaintiffs were

owners in possession of $\frac{1}{2}$ share of land measuring 09 Kanals 16 Marlas as co-sharers, as fully described in the head note of the plaint. Respondent-plaintiffs were also in exclusive possession of land measuring 04 Kanals 18 Marlas and were cultivating the same. The appellant-defendants had no concern with the suit land. The appellant-defendants, in order to cause loss to the respondents-plaintiffs, wanted to forcibly dispossess the respondent-plaintiffs from the suit land, for which they had got no legal right. If the appellant-defendants succeeded in their illegal design, then the respondent-plaintiffs would suffer an irreparable loss. The appellant-defendants were asked many a times to desist from their illegal design. On their refusal to do so, the respondent-plaintiffs filed the suit in the Court below.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiffs are estopped by their own act and conduct? OPD
4. Relief.

Both the parties brought on record their documentary as well as oral evidence, in support of their respective stands taken in their pleadings.

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 duly proved their case by leading cogent and convincing evidence. Accordingly, suit for permanent injunction filed by the plaintiffs was decreed against the defendants vide judgment and decree dated 02.09.2013 passed by the learned trial Court. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned District Judge vide impugned judgment and decree dated 03.11.2014. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

It is a matter of record that the ownership and possession of the plaintiffs-respondents was not denied by the defendants-appellants. Once the plaintiffs were able to prove their ownership as well as possession over the suit land, their suit was rightly decreed by both the learned Courts below by recording their concurrent findings of facts. It is so said because despite being the co-sharers, appellants-defendants would have no business to interfere in the peaceful possession of the plaintiffs-respondents. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned District Judge 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 first appellate Court in para 15 of the

impugned judgment, which deserve to be noticed here, read as under: -

“The respondent-plaintiffs in their suit claimed the exclusive possession over land measuring 04 Kanals 18 Marlas. The appellant-defendants are claiming that they are in possession because Waryam Singh executed a Will in favour of Buta Singh husband of appellant-defendant No.2 and also in favour of Jagga Singh. Both, Buta Singh and Jagga Singh, are sons of Waryam Singh. It is also claimed that after the death of said Waryam Singh, they have become owners of the entire estate of Waryam Singh. It is their case that the mutation of inheritance of Waryam Singh has been got sanctioned by the respondent-plaintiffs by pleading wrong facts. The respondent-plaintiffs have not come to the Court with clean hands to claim the discretionary relief of permanent injunction. In this case, the parties have examined themselves as witnesses. The learned lower Court has taken into consideration the evidence as well as the arguments brought on record by both the parties and has also taken note of the documentary evidence viz-a-viz to the copy of the jamabandi, holding that presumption of truth is attached with the copy of the jamabandi, which is, however, rebuttable. The learned lower Court has taken note of the fact that in the copy of the jamabandi, the names of the respondent-plaintiffs have been recorded and they have been shown as owners and in exclusive possession of 04 Kanals 18 Marlas, whereas the appellant-defendants have failed to prove

their possession or to rebut the presumption. The learned lower Court further held that the documents produced by the appellant-defendants, which are otherwise marked documents and not got exhibited, have no evidentiary value or help to the appellant-defendants. The learned lower Court further held that mutations No.275 and 15028 pertains to some other property, therefore, these mutations are not sufficient to rebut the entries recorded in the jamabandi in favour of the respondent-plaintiffs. The categorical finding of the learned lower Court is that the respondent-plaintiffs are recorded as in possession, therefore, they have got every right to protect their possession by filing the suit. The learned lower Court has also held that the suit is maintainable and the appellant-defendants have failed to prove as to how the respondent-plaintiffs are estopped by their act and conduct from filing the suit. The possession of the respondent-plaintiffs has been duly established on the file. It is a discretionary relief. There is nothing on the file which could suggest that the respondent-plaintiffs have not approached the Court with clean hands. The evidence of the attorney of the respondent-plaintiffs is legally admissible. The learned lower Court has given detailed findings in its judgment and the reference may be given to paras No.10 to 12.”

A combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that the defendants-appellants had no case right from day one. It is not the pleaded or

argued case on behalf of the appellants that partition proceedings seeking partition of the joint suit land by metes and bounds were pending before any authority at the hands of the appellants. So far as undisputed ownership and possession of the respondents-plaintiffs over the joint land was concerned, that was also not being challenged by anybody.

Appellants were at liberty to seek partition of the suit land, in case they were finding themselves in a disadvantageous position. However, this is also not their pleaded or argued case. In such a situation, appellants cannot be permitted to interfere into peaceful possession of their co-sharers-plaintiffs. It goes without saying that any of the parties would be at liberty to seek partition of the suit property in accordance with law. 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.

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.

[RAMESHWAR SINGH MALIK]
JUDGE

05.09.2017
vishnu

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