

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

RSA No.4362 of 2016 (O&M)

Date of Decision: 09.05.2017

Chaman Lal

....Appellant

Versus

Surinder Kaur and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajiv Joshi, Advocate
for the appellant.

DAYA CHAUDHARY, J.

Appellant-Chaman Lal has filed the present appeal to challenge the judgments and decrees dated 07.03.2015 and 05.03.2016 passed by the trial Court as well as by the lower Appellate Court, respectively.

Appellant-plaintiff-Chaman Lal filed a suit for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the property, in dispute, marked as ABCD shown in red colour in the site plan. The suit of the plaintiff-appellant was dismissed vide judgment and decree dated 07.03.2015 passed by learned Additional Civil Judge (Senior Division), Phillaur. Said judgment and decree passed by the trial Court was challenged before the learned Additional District Judge, Jalandhar by way of filing appeal, which was also dismissed on 05.03.2016.

The plaintiff-appellant, after losing his battle before the two Courts below, has approached this Court by way of filing Regular Second

Appeal by raising various grounds.

Learned counsel for the appellant submits that both the Courts below have misread the entire evidence available on record and in spite of recording a positive finding that the plaintiff is co-owner in the suit property, still the claim has been dismissed. Learned counsel also submits that the claim of the plaintiff-appellant has been declined only on the ground that alternative relief in the form of partition suit along with relief of possession could have been availed. It is also the argument of learned counsel for the appellant that the possession of the appellant has been proved on record not only by oral evidence but on the basis of documentary evidence but still the finding has been recorded against the appellant, whereas, it is a settled law that if any co-owner threatens to dispossess another co-owner, who is in possession of the joint property, the Court can always grant injunction against such forcible dispossession.

Learned counsel for the appellant has also relied upon the judgment of Delhi High Court in case ***Balwan Singh and others (Shri) vs Shri Jaipal Singh and others 2007(7) AD (Delhi) 246*** in support of his contentions.

Heard the arguments of learned counsel for the appellant and have also perused the judgments of the trial Court as well as of the lower Appellate Court.

Facts relating to filing of suit, dismissal there of and thereafter, filing of appeal and its dismissal are not disputed.

The trial Court has framed the following issues :-

- “1. Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether suit is not maintainable in the present form?*

OPD

3. Relief.”

The findings recorded by the trial Court are reproduced as
under :-

“8. After perusing the whole evidence and the documents placed on the file, the plaintiff is alleging the house in dispute with specific boundaries regarding which he is seeking injunction. He has duly proved on the file water bill receipts Ex.P3 to Ex.P6, PSEB bill Ex.P7 to show his possession. Defendants have proved agreement regarding partition of the suit property dated 26.06.2006 but the plaintiff has denied the above said agreement ever effected between them. Kishori Lal has been examined by the defendants to prove the above said agreement dated 26.06.2006. As per that agreement all the three properties was got partitioned with mutual consent of plaintiff along with his brothers Gurdeep Lal and Amarjit Lal which are mentioned in the above said agreement and in view of that partition the possession of properties were given to each of them. So plaintiff cannot deny this agreement. No evidence in rebuttal has been produced by the plaintiff to prove that the agreement is forged and fabricated document. Thus the plaintiff has concealed the material facts from this Court, as he has not disclosed the above said agreement executed between the parties. Moreover no injunction can be issued against the co-sharer, as the possession of a co-sharer presumed to be possession on every inch of the suit property.”

Similarly, the findings recorded by the lower Appellate Court
are as under :-

“18. On all counts, it can be validly concluded that the appellant has failed to proved on file his

exclusive ownership and possession over the suit property through any evidence on file. Even if the possession of the appellant is inferred as a joint owner in possession of the suit property, it is apparent that the appellant has filed simplicitor suit of permanent injunction whereas as joint owner the efficacious remedy available to him is to file a suit for possession by way of partition coupled with the relief of injunction as per law.

19. In view of the findings recorded above, it can be validly inferred that the appellant has failed to prove his entitlement to the relief of injunction as prayed for by him being exclusive owner in possession of the suit property hence the issue is rightly decided by the trial court against the appellant and in favour of the respondents.”

On perusal of findings recorded by both the Courts below, admittedly, there was an understanding between the appellant and defendant-respondents No.3 and 4 and Amarjit Lal with the consent of their father vide writing dated 26.06.2006. After the death of their father, the properties mentioned in the writing were partitioned and that writing was bearing signature of appellant also. As per case of defendant-respondents, the suit property actually falls to the share of Gurdeep Lal along with the electricity connection. The appellant is having 1/3rd share in the total property left by his father. The appellant himself has admitted during his cross-examination that Bakshi Ram was his father and respondents-Gurdeep Lal and Amarjit Lal are his brothers. Gurdeep Lal had died in the year 2007 and all the three brothers are legal heirs of deceased father-Bakshi Ram. He has also admitted the existence of two plots in his village in the name of his father Bakshi Ram including one house. He has also admitted his residence

along with Amarjit Lal in the same house. As per admission of the appellant, the properties left by his father is divided into three brothers. Plaintiff has claimed his exclusive ownership and possession over the suit property only on the basis of purchase of suit property from one Resham Lal in the year 2008 but he has failed to prove on record any sale deed executed in his favour by said Resham Lal. The appellant has only relied upon an agreement of the year 2008 but he has specifically stated that he could not produce that agreement in Court. Even he has shown his ignorance qua the sale consideration paid by him to said Resham Lal at the time of purchase of that property. In absence of any document, it has not been proved on record that the appellant is in exclusive ownership or possession over the suit property.

On perusal of findings recorded by both the Courts below, it appears that the appellant has failed to prove on record his exclusive ownership and possession over the suit property by way of any oral or documentary evidence. It has also been observed by the lower Appellate Court that in case, the appellant is aggrieved in any manner with regard to his share, he should have filed a suit for possession by way of partition coupled with the relief of injunction as per law. It has been held by lower Appellate Court on the issue of question of maintainability that the appellant has failed to prove his exclusive ownership and possession over the suit property and as such, his status qua the properties left by his father is that of a co-owner and in that situation, the provisions of section 41(h) of the Specific Relief Act comes into picture which shows that if an alternative remedy is available with the party, then the suit for simplicitor injunction is not maintainable. Both the Courts below have given concurrent findings by

observing that the pleadings, evidence and documents brought on record by the appellant cannot be considered to have proved his exclusive ownership and possession over the suit property and both the Courts below have rejected the claim of the appellant and decided in favour of defendant-respondents.

On perusal of findings recorded by both the Courts below and by considering the submissions made by learned counsel for the appellant, no interference is required by this Court. The appeal is accordingly dismissed being devoid of any merit.

However, the appellant is at liberty to avail the remedy of filing a suit for partition.

(DAYA CHAUDHARY)
JUDGE

09.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

No