

RSA No.3520 of 2015 (O&M)

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

**RSA No.3520 of 2015 (O&M)
Date of Decision: 31.1.2017**

Rajinder Singh and others

.....Appellants

Vs.

Gurmej Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.K.Arya, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 9.1.2015 passed by the learned District Judge, Gurdaspur, whereby first appeal of the defendants was allowed, setting aside the judgment and decree dated 14.12.2012 passed by learned trial court, decreeing the suit for permanent injunction, plaintiffs have approached this Court by way of instant regular second appeal.

Brief facts of the case, as recorded by learned trial court in para 1 of its judgment, are that plaintiffs No.1 and 2, alongwith father of plaintiff No.3 namely Ajit Singh, purchased land measuring 2 kanals 6 marlas out of land measuring 3 kanals 10 marlas, as fully detailed in the head note of the plaint, from the original vendee Smt. Gurmej Kaur wife of Sh. Nirvair Singh

vide registered sale deed dated 10.12.2001. Since the date of purchase, plaintiffs were in cultivating peaceful possession over the land in question and they were cultivating the suit land peacefully without any interruption. The plaintiffs were sowing barsin as well as wheat crop over the suit land. The father of plaintiff No.3 namely Ajit Singh died and the suit was filed by plaintiff No.3, as his legal heir. The defendants have got no right, title or interest in the suit land, but being headstrong and influential persons, they were threatening the plaintiffs to interfere and dispossess the plaintiffs from the land in question illegally, forcibly. The plaintiffs were having apprehension in their minds that the defendants would change the khasra girdawari entries in their names in a clandestine manner. The plaintiffs requested many times to the defendants to admit their claim but to no avail.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. After completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether plaintiffs are in possession of the suit land?OPP
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP
3. Relief?

With a view to prove their respective pleaded cases, both the parties brought on record 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 proved their case for permanent injunction and accordingly, their suit

was decreed, vide judgment and decree dated 14.12.2012. Defendant/respondent-Gurmej Singh filed his first appeal which came to be allowed by learned first appellate court, vide impugned judgment and decree dated 9.1.2015. Hence this regular second appeal at the hands of the plaintiffs.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that entire case of the plaintiffs was based on sale deed dated 10.12.2001 (Mark A), whereby they claimed to have purchased the share of Smt. Gurmej Kaur. Since vendor of the appellants was co-sharer in the joint land, they would step into the shoes of their vendor and would become co-sharers in the joint khewat. Appellants never sought any partition of the joint khewat to the extent of their shares on the basis of the abovesaid sale deed. Although the sale deed was not duly proved, in accordance with law, yet even if it is accepted that the appellants became co-sharers in place of their vendor-Smt. Gurmej Kaur, even then they would not be entitled for an injunction against their co-sharers. It is so said, because the plaintiffs failed to plead and prove as to on which specific piece of undivided suit property, they were in actual physical possession. Having said that, this Court feels no hesitation to conclude that learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

It is the settled proposition of law that every co-sharer shall be deemed to be in possession over every parcel of the joint land. It is neither pleaded nor argued case on behalf of the appellant that the land was ever sought to be partitioned. Until and unless, a co-sharer pleads and proves his actual physical possession on any particular piece of joint land, he would not

be entitled to seek injunction against his co-sharer. In this regard, reliance can be placed on the judgments rendered by two Hon'ble 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**.

Before arriving at its conclusion, learned first appellate court re-considered the facts and evidence available on record, by recording his own cogent findings. Relevant observations made by learned first appellate court, in para 13 of the impugned judgment, which deserve to be noticed here, read as under:-

“After considering the rival contentions of the parties and after going through the record of the case, I found myself in agreement with the submissions of the learned counsel for the appellant. It is a simple suit for injunction, so respondents-plaintiffs have to prove their exclusive possession over the suit property, which is khasra No.49/2 min pahar (1-10) and min dakhan (2-10). Out of this property, respondents claimed to be in possession of land measuring 2 kanals 6 marlas. However, it is neither pleaded nor proved over which part of the suit property they are in possession. Whether they are in possession of 2 kanals of land comprised in khasra No.49/2 min dakhan and other land in min pahar or whether they are in possession of khasra No.49/2 min Pahar 91-10) and remaining land out of khasra No. 49/2 min dakhan, has neither been pleaded nor proved. Respondents have claimed to have purchased the suit

property vide sale deed mark 'A'. Although the sale deed has not been proved on the file as per law, but still if it is considered even then vide this sale deed respondents have purchased only share of Gurmej Kaur and not any specific khasra number. There is nothing on the file that Gurmej Kaur was in exclusive possession of this property and as such was in a capacity to deliver the possession to the respondents. The respondents have also relied upon jamabandis Ex.P.1 and Ex.P.2 but in both these jamabandis name of the respondents do not find figure in the column of cultivation. No kharsa girdawari has been produced by them to prove their possession. So, they cannot be held to be in possession of the suit property. Further more, Ex.D.1 and Ex.D.2 are the judgment and decree dated 25.11.2008, vide which appellant alongwith others were held to be in possession of the suit property and that case was filed against Rajinder Singh and Gurdeep Singh respondents. Although Ex.D1 and Ex.D2 are ex parte judgement and decree but the same has not been set aside till date. There is nothing on the file that the respondents have challenged that decree or not.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment. Further, no substantial question of law has been found involved in the present case, which may warrant interference at the hands of this Court,

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while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Involvement of substantial question of law is sine qua non for entertaining second appeal by this Court. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286.**

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 appeal is misconceived, bereft of merit and without any substance, thus, it must fail. No case 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

31.1.2017
Ak Sharma

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