

**R.S.A. No. 628 of 2016 (O&M)**

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

**R.S.A. No. 628 of 2016 (O&M)**

**Date of Decision: 08/11/2017**

Angrej Singh

.....Appellant

**Versus**

Rajinder Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

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

**AVNEESH JHINGAN, J.**

The present regular second appeal is at behest of the plaintiff being aggrieved of dismissal of suit seeking permanent injunction.

For the sake of convenience the parties are being referred as per their original position in the suit.

The suit for permanent injunction was filed by the plaintiff to the fact that plaintiff along with his brother Shinder Singh and Balwinder Singh, are owner in exclusive possession of land as detailed in the suit and are getting benefit of cultivation of the same, as per possession and cultivation.

The facts as averred by the plaintiff are that he is in exclusive possession of the land as detailed in the suit. The said land was purchased by the plaintiff and his brother with specific khasra number from Balwinder Singh and Mutation Nos. 1256 and 1293 were sanctioned. It was further averred that from the date of purchase of the suit land plaintiff along with

his brother is in exclusive possession and khasra girdawaris are in their

favour. It was further averred that the defendants have no concern with the said land but they in-conivance with each other are forcibly dispossessing the plaintiff, which has forced him to file the suit.

On notice defendants filed written statement and took various objections. Replication was filed to the written statement reiterating the version in the suit.

The trial Court vide order dated 13.12.2011, framed the following issues:

- (i) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
- (ii) Whether the plaintiff has no cause of action and locus-standi to file the present suit?OPD
- (iii) Whether plaintiff is estopped from his own act and conduct from filing the present suit?OPD
- (iv) Whether suit of the plaintiff is not maintainable?OPD
- (v) Relief.

In order to support his case, the plaintiff himself stepped into the witness box as PW1 and Rajinder Singh Member Panchayat was examined as PW2 and Balwinder Singh deposed as PW3. Jamabandis for the year 2006-07 and Khasra girdawaris for the year 2010-11 were produced as Ex.P1 to Ex.P3.

For the defendants, Rajinder Singh-defendant himself stepped into the witness box as DW1, Gurnam Singh was examined as DW2 and order of Assistant Collector Grade-II was produced as Mark-A and copy of Khasra girdawari as Ex.D1.

Learned trial Court after considering the witnesses and

evidence and after appreciating the facts of the case, dismissed the suit vide judgment and decree dated 3.1.2013.

Aggrieved of the said judgment and decree, the plaintiff preferred first appeal. The First Appellate Court, vide its judgment and decree dated 29.8.2014 dismissed the appeal and upheld the judgment and decree passed by the learned trial Court.

The Regular second appeal has been filed being aggrieved of the judgments and decrees passed by the learned Lower Courts.

In the present appeal four questions of law were framed which are reproduced as below:

- "(a) Whether the entries of revenue record regarding khasra girdawaries can be taken as proof of possession?
- (b) Whether the sanctioning of mutation without there being transfer of the possession can be permissible under law?
- (c ) Whether a co-sharer can maintain suit for permanent injunction to protect his cultivating possession of specific khasra numbers out of joint khewat?
- (d) Whether the judgments and decrees of Ld.both the courts below are result of misreading of evidence on record?"

Learned counsel for the plaintiff instead of addressing arguments on the questions, raised the issue that once the plaintiff had purchased the land with specific khasra number and same was earlier in possession of the vendor and was now in possession of the vendee (plaintiff), in such circumstance, the Courts below erred in dismissing the suit. The contention raised by learned counsel for the plaintiff are that it has been proved on record that the plaintiff alongwith his brother purchased the

shows that Balwinder Singh was in exclusive possession of the said suit property. He contended that the jamabandis and the Khasra Girdawaris produced as Ex.P1 to Ex.P3 establish the possession of Balwinder Singh and now of the plaintiff. His reliance was that as per the Khasra Girdawari, the crops sown were of Balwinder Singh, therefore, the suit should have been decreed. He placed reliance upon the statement of Balwinder Singh PW2 that the seller had specifically stated that he was in exclusive possession of his share of land.

Concluding his arguments, he stated that even though it was a joint property but as the seller had an exclusive possession of his share and he had sold his share by mentioning specific khasra number, in such circumstance, the suit should have been decreed.

The issues which arise in the case in hand are: "If in a joint holding a co-sharer is in possession of specific portion and sells his specific portion, can the purchaser claim ownership to the said portion or not. Secondly merely holding a portion of joint holding by a private arrangement would amount to partition or not.

In order to deal with the said two issues, it is important to note that in permanent injunction, title is not be decided. There was certain reliance on orders passed by the Assistant Collector Grade-II and by learned Collector Sub Division Sardulgarh, those proceedings will not have any effect on the decision of the present suit. Neither there is any dispute raised in the present proceedings with regard to the ownership of the joint holding nor any dispute has been raised with regard to sale made by Balwinder Singh to the plaintiff. It is not necessitated to go into all these issues at this stage.

There cannot be a serious dispute that the plaintiff was able to establish that there was a sale between Balwinder Singh and the plaintiff for specific khasra numbers. There is no dispute with regard to the fact that the land purchased is out of a joint holding. It was not established that there was a partition of joint holding land, rather during the course of arguments, learned counsel very fairly and candidly admitted that there was no partition.

In the above circumstance, in absence of partition and the fact that the suit land was part of the joint holding even assuming that exclusive possession was proved, it would be a result of private arrangement and on that basis the purchaser cannot assert exclusive ownership to the portion transferred. The said issue is no longer res-integra and is covered by a decision of Full Bench of this Court in **Ram Chander Versus Bhim Singh and others 2008(3) RCR (civil) 685**, wherein it has been held as under:

"19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned."

The law is well settled that holding a particular share of a joint property as a result of a private arrangement will not result into partition. The Hon'ble Apex Court in **M. Venkataramana Hebbar (D) by L.R.s Vs. M. Rajagopal Hebbar and others**, 2007 (6) SCC 401 has held as under :-

"9. The execution of the said document is not, in question. It is furthermore not in dispute that

*all the co-shareholders are not parties thereto. Any co-owner can cause a severance in the status of joint family by expressing his unequivocal intention to separate. Such intention can be expressed even by filing a suit for partition. But, despite such separation in the joint status, parties may continue to possess the lands jointly unless a partition of the joint family property takes place by metes and bounds.*

*x x x*

*14. The High Court, therefore, cannot be said to have committed any error whatsoever in arriving at the finding that by reason of the said purported deed of family settlement, the co-owners had not partitioned the joint family property by metes and bounds. The plaintiffs/respondents were thus, yet to relinquish their rights in the joint family properties by receiving the said amount of Rs. 15,000/-. Deed of family settlement had not been given its full effect to.”*

In the present case, the plaintiff by purchasing share of Balwinder Singh cannot put himself in a better position than what Balwinder Singh. The plaintiff is merely stepping into his shoe.

The cogent findings recorded by the learned First Appellate Court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the First Appellate Court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any

substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed,  
however, with no order as to costs.

08.11.2017  
reema

(AVNEESH JHINGAN)  
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No