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

**RSA No. 6024 of 2015 (O&M)  
Decided on: 28.08.2017**

**Sunita and another** .....**Appellants**

**versus**

**Ramesh Devi and another** .....**Respondents**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. R.A.Sheoran, Advocate,  
for the appellants.

Mr. V.P.Sangwan, Advocate  
for respondent No. 1.

**Rajbir Sehrawat, J.(Oral)**

This is an appeal by defendants No. 2 and 3 in original suit challenging the judgment and decree passed by the learned lower Appellate Court; whereby the lower Appellate Court had upheld the judgment and decree passed by the Trial Court decreeing the suit for permanent injunction filed by the plaintiff.

The brief facts of the case are that the plaintiff filed a suit claiming that she along with defendants and other persons was co-sharer in the suit property and that she was the owner in possession of the land measuring 22 Kanals 19 Marlas. It was further pleaded that although no partition through revenue officials have taken place, however, an oral partition had taken place between the co-sharer and in that partition she was allotted the land mentioned above; comprising in Kila No. 42//11, 12, 20/1, 19/4, 6 and 15. It was further

pleaded that she is in cultivating possession of the suit property and two tube wells have also been installed in the land under her possession. It was further pleaded that in the last year, the defendant No. 1 had taken her land on lease for consideration of ₹15,000/- but he did not pay even the lease amount and she had reported the matter to the police. Before the police, the matter was compromised and it was agreed that the defendant would pay ₹15,000/- in the month of April and that they would initiate partition proceedings for getting the property partitioned as per the oral partition. However, it was pleaded, the defendant had been making attempt to interfere in her peaceful possession. Therefore, the suit was filed for restraining the defendants-appellants herein from interfering in the peaceful possession of the plaintiff over the land mentioned in the above said kila numbers.

The defendants-appellants herein filed written statement. In the written statement, they admitted that there has been an oral partition. They also pleaded that the plaintiff was put in possession over her share. They also said that the plaintiff had been giving her share on rent to someone else but thereafter, she gave the land on lease to them and, therefore, they cultivated the land till April, 2012. However, it was claimed by the defendants that the plaintiff is not in exclusive possession of the kila numbers mentioned in the suit.

The suit was decreed by the Trial Court. Aggrieved of that the judgment and decree, the present appellants filed an appeal before the lower Appellate Court. It is worth to mention here that while considering an application for interim injunction the trial Court

had granted an injunction in favour of the plaintiff-respondent herein. The defendants-appellants had filed an appeal before the learned lower Appellate Court challenging the grant of that interim injunction. However, at the time of hearing, the present appellants-defendants made a statement that they would not interfere in peaceful possession of the plaintiff and withdrew their appeal.

It is also worth to mention here that after the withdrawal of the appeal by the defendants, the trial Court while dealing with the matter of police help had recorded that the plea of the defendants that the plaintiff is not in the exclusive possession of the suit property could not be accepted. The Trial Court also recorded that since the police was finding it difficult to identify the suit property, therefore, the *Patwari* was appointed to demarcate the property involved in the suit so that the interim order of injunction can be effectively enforced against the defendant through the police help. Resultantly, the Patwari had identified the suit property over which the plaintiff was claiming the possession.

The lower Appellate Court dismissed the appeal against the judgment and decree while recording the finding that the plaintiff has successfully proved to be in exclusive possession of the kila numbers mentioned in the suit. It was further held by the lower Appellate Court that once the defendants-appellants herein admitted that there was an oral partition then the case of plaintiff gets full support and it was for the defendants to prove which kila numbers were given to the plaintiff in that oral partition, if the suit property was not the kila numbers given to her in that oral partition. However, no

such plea was taken by the defendants in the written statement nor any such evidence was led by the defendants during the evidence. Still further, the lower Appellate Court also recorded a finding that the appellants herein-defendants themselves have admitted the possession of the plaintiff by admitting that they had taken the property on lease from her upto the year 2012. Still further, the Court relied upon the statements made by the defendants-appellants, at the stage of appeal, against the interim order, to the effect that they would not interfere in the peaceful possession of the plaintiff,.

It is not in dispute between the parties that the parties are real sisters belonging to the same family, therefore, they were the co-sharer in the land. However, the plaintiff claimed that she was given the kila numbers mentioned in the suit in an oral partition which had taken place between the sisters and brothers. The factum of the oral partition was admitted by the defendants-appellants herein. It is also not the case of the defendants-appellants that the plaintiff was in possession of share more than her entitlement. It is further not the case of the appellants that if kila numbers mentioned in the suit were not allotted to the plaintiff in the oral partition then which kila numbers were allotted to her in that oral partition. Very cleverly, the appellants have not disclosed even the kila numbers in their possession as per that oral partition. They have not given details as to which kila numbers were allotted to them during that oral partition. It is also not in dispute that the plaintiff was not residing in the village and the defendants were residing in the village where the property is situated.

Therefore, for some time the defendants had taken the suit property

on lease from the plaintiff and had even paid the lease money. The plea put forth by the defendants is that although they had taken share of the plaintiff on lease and paid the lease money also but it was not the kila numbers involved in the suit. But at the same time, they are not disclosing as to which kila numbers they had taken on lease from the plaintiff. This disclosure was all the more necessary on their part because they are admitting that they have the possession of their share out of the joint property after that oral partition. Hence, almost entire case of the plaintiff has already been admitted by the defendants-appellants herein.

A perusal of the findings recorded by the learned Courts below makes it clear that there is nothing wrong with the findings recorded by the Courts below. The Courts below have rightly held that once the defendants had admitted the oral partition and claim exclusive possession over their share of the property, then it was incumbent upon them to explain which property was given to the plaintiff in that oral partition; if it was not the suit property. Learned Courts below have rightly recorded the finding that the statement made by the defendants before the learned lower Appellate Court; in the appeal against the interim order; to the effect that they would not interfere in peaceful possession of the plaintiff also proves that the plaintiff was in possession of the suit property. Still further, the learned Courts below have rightly relied upon the admission of the appellants that they had taken on lease the land from the plaintiff and had paid rent also for the same for some time. In view of this also, it was for them to prove as to which land they had taken the land on

lease from the plaintiff; if the suit property was not that land. However, the defendants have miserably failed to prove anyone of the above said fact. Hence, the findings recorded learned Courts below are upheld.

Learned counsel for the appellants relies upon para 15 of the judgment of Full Bench of this Court reported in **2008 (1) PLR 747** titled as ***Ram Chander Versus Bhim Singh and others***. To claim that no injunction can be granted if a property is jointly held, by two or more persons.

However, this judgment is also of no help to the appellant because the appellants have themselves admitted that there was an oral partition between the parties.

No other argument was raised by the learned counsel for the appellants.

In view of the above, the judgment and decree passed by the Courts below are upheld. The appeal is hereby dismissed.

However, both the parties have brought to the notice of the Court that some partition proceedings for formalising the partition are also pending before the revenue authorities and two tube wells; existing on the land in possession of the plaintiff-respondent herein; are also subject matter of the partition. In this regard also both the counsel have jointly stated before the Court that the tube-well; the electric connection of which is in the name of the father of the parties is agreed to be going to the share of the plaintiff and the tube well for which the electric connection is in the name of the mother of the parties is agreed to be going to the defendants-appellants herein.

The revenue authorities while considering the matter in the partition proceedings may take into consideration the statement of the parties. However, these observations have no effect on the judgment and decree involved in the present appeal which have already been upheld as above. These observations are being made only because parties insisted on this arrangement to be adopted before the revenue authorities in the partition proceedings.

28<sup>th</sup> August, 2017

shabha

[RAJBIR SEHRAWAT]

JUDGE

|                           |   |     |
|---------------------------|---|-----|
| Whether speaking/reasoned | - | Yes |
| Whether reportable        | - | No  |