

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6126 of 2015 (O&M)
Date of Decision:21.11.2017

Maya Chand and another

...Appellants

Versus

Manoj Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Lalit Sharma, Advocate for the appellants

RAJIV NARAIN RAINA, J. (Oral)

1. This is defendants' second appeal. The plaintiff has succeeded in a suit for mandatory injunction in both the courts below to deal with his property without let or hindrance. The property in dispute lies within the *lal lakeer* of the village, and therefore, possession is nine-tenths of the law and the controlling factor. Defendants no.1 and 2 are the uncles of the plaintiff while defendant no.3 is the brother of the plaintiff who has been arrayed as a proforma respondent and has not joined as co-plaintiff with his brother in the cause espoused by the plaintiff.

2. As per the deposition of the plaintiff, which has remained unrebutted, the family owns two plots within *lal dora*, one admeasuring 250 square yards, the other 500 square yards. The larger plot is in the possession of defendants no.1 and 2 who are the contesting parties. The dispute revolves round the plot measuring 250 sq. yards. The plaintiff is the grandson of one Sheo Nath. Sheo Nath had three sons, namely, Ramanand, Maya Chand (defendant no.1) and Phool Chand (defendant no.2). Plaintiff Manoj Kumar and proforma defendant Jitender are the sons of Ramanand. On the death of Sheo Nath, the property devolved on the three sons each with 1/3rd share in the two plots. Therefore, Manoj Kumar, plaintiff and his

brother, the proforma respondent Jitender are owners of 1/3rd share in the two plots.

3. The admitted position is that none of the parties has any documentary proof of ownership over the plot in dispute. Indisputably, Maya Chand and Phool Chand are in possession over the larger plot which is not part of the relief sought in the suit.

4. The plaintiff-respondent constructed a boundary wall around the plot of 250 sq. yards which was demolished by the defendants which led to the dispute and the institution of the suit.

5. Plaintiff-Manoj Kumar has succeeded in both the courts below and his possession has been restored and permanent injunction issued leaving him free to construct the boundary wall and exclusive use of the property in dispute. It would be wholly inequitable, I think, if the plaintiff is divested of the possession plot of 250 square yards leaving him not to tether his cattle on the vacant plot or to carry out construction as per his wishes. The trial court relied on photographs, which learned counsel for the appellants says, were not admissible in evidence or relevant to the determination of the case. The courts below have thought to the contrary and have rightly done so in decreeing the suit against the defendant in order to create a just balance between the parties of their respective rights, title and interest. It would seem unfair that the plaintiff should be thrown out altogether from the two plots and take nothing for himself even when he is the son of Ramanand son of Sheo Nath and co-sharer in the properties and the property in dispute. Law is well settled that possession of a co-sharer should not be disturbed when it is long settled.

6. On the basis of the lack of evidence and materials on record justifying a decree in favour of the defendants, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgments and decrees

perversity nor the same can be said to be afflicted with any fundamental error apparent on the face of record so as to require interference by this Court in this second appeal when the findings are recorded as per pleadings and after proper appreciation of the evidence adduced by the parties. No question of law, much less a substantial one, arises for consideration in this appeal.

7. For the foregoing reasons, this appeal is held to be without substance and is hereby dismissed. However, the parties, if so advised, are at liberty to institute suit for partition for division of property as per law.

21.11.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No