

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

**RSA No.2011 of 2017 (O&M)
Date of Decision:21.07.2017**

Sharam Singh and others

... Appellants

Versus

Smt. Sawaranjit Kaur and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Dheeraj Mahajan, Advocate,
for the Appellants.

ANIL KSHETARPAL, J.

Plaintiffs are in Regular Second Appeal against concurrent finding of fact arrived at by the Courts below.

Plaintiffs had filed a suit for permanent injunction restraining the defendants, their agents, servants, assignees or representatives from dispossessing the plaintiffs from their peaceful exclusive cultivating possession.

The dispute in the present case is with respect to 11 kanals 12 marlas of land. It is not in dispute that plaintiffs and defendants are co-owners. Plaintiffs claimed that they are in exclusive possession and, therefore, the defendants should not interfere with their possession unless they seek partition. Whereas, it is the stand of the defendants that plaintiffs are in possession of their share and the defendants are in possession of their share. Defendants have further claimed that they have purchased the property from Sharam Singh etc. vide registered sale deed dated 13.2.2011.

Delivery of possession is specifically mentioned in the Sale Deed. Even mutation has been entered in favour of the defendants.

Learned trial Court as well as the first Appellate Court after appreciating the evidence on the file, recorded a concurrent finding of fact that plaintiffs are not proved to be in exclusive possession of the property. The parties to this lis being co-sharers, plaintiffs cannot claim injunction against co-sharers. Learned first Appellate Court has further recorded a finding that the plaintiffs have come to the Court with clean hands. Even the plaintiff Sharam Singh has not stepped into witness box.

I have heard learned counsel for the appellant at length.

Learned counsel for the appellant has submitted that the Courts below have not recorded a finding as to which party is in possession, of what specific area. Learned counsel for the appellant has further submitted that in the jamabandi, plaintiffs are shown to be in possession, therefore, they are entitled to injunction.

I have carefully gone through the judgements passed by the Courts below. The judgments passed by the Courts below are well reasoned and after considering the evidence available on the file.

Learned trial Court has clearly recorded that plaintiffs and defendants are in joint possession of the property. They are co-sharers. Plaintiffs have not brought on record any substantive evidence to show that they are in exclusive possession of the property. Learned first Appellate Court has also confirmed the aforesaid finding. Once it has been found by the Courts below that the parties are co-sharers and plaintiffs are not found to be in exclusive possession, I do not find any reason to interfere with the findings of the Courts below.

Second submission of the learned counsel for the appellant is that since in the jamabandi, plaintiffs are recorded to be in exclusive possession, therefore, plaintiffs are entitled to injunction.

The possession of the plaintiffs in jamabandi is recorded as co-owners. Entries in jamabandi certainly have a presumption of truth. However, such presumption is always rebuttable. A reading of the sale deed in favour of the defendants dated 13.02.2014 clearly shows that a part of the the property was sold to the defendants. Delivery of possession is specifically recorded in the sale deed, which is a registered document. Therefore, the contention of the learned counsel for the appellant cannot be accepted.

Learned counsel for the appellant has not been able to point out any substantial question of law permitting the High Court to interfere in Regular Second Appeal. Learned counsel for the appellant has further not been able to point out any ground as per Section 41 of the Punjab Courts Act, allowing this Court to interfere in Regular Second Appeal.

In view of the above, this appeal filed by the plaintiffs against concurrent finding of fact recorded by the Courts below, is ordered to be dismissed.

21.07.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No