

Sr.No.113

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

**RSA No. 2955 of 2017(O&M)
Decided on: 26.07.2017**

Malkiat Singh

.....Appellant

versus

Gurtej Singh

.....defendant

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Jasbir Rattan, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is second appeal filed by the plaintiff against the concurrent judgment and decree passed by the Courts below; whereby his suit for permanent injunction restraining the defendant from dispossessing him from the suit property or interfering in peaceful cultivation of the suit property was dismissed.

For convenience, the parties shall be referred to as the plaintiff and defendant, as they are in the original suit.

The facts as mentioned in the judgment of the lower Appellate Court are that the plaintiff had filed a suit, as mentioned above, claiming that he was the owner in possession of the suit property measuring 44 bighas 10 biswas, as detailed in the head note of the plaint, having purchased it from Bikkar Singh and Sukhdev Singh. It was further pleaded that since the date of purchase, he was in exclusive possession over the suit property and his possession was reflected in the khasra girdawaries. The defendant was neither co-owner nor had any concern with the suit property.

It was further pleaded that Balbir Kaur widow, Hardeep Kaur and Manpreet Kaur; the daughters and Gurtej Singh son of Sukhdev Singh inherited the estate of Sukhdev Singh to the extent of 1/3rd share in the land measuring 10 bigha 6 biswas vide mutation No. 281 in khewat No. 82; as mentioned in Jamabandi. As such, defendant Gurtej Singh is co-sharer only in the land measuring 10 bighas 6 biswas and has no concern with the suit property. It was further pleaded that he had sown sugarcane crop in khasra Nos. 1020/101, 1018/101 and 1015/100 while in rest of the suit property, he had sown wheat crop. It was further pleaded that the Khasra Nos. 1021/102/(2-0), 1019/101/(3-0) are owned and possessed by the defendant adjoining khasra no. 1010/101 owned and possessed by the plaintiff in which two small rooms have been constructed by the plaintiff. These two small rooms were being used by him for storing fodder and other agricultural implements. It was further claimed that defendant had entered into an agreement to sell land measuring 5 bighas with the plaintiff and had received ₹ 8 lakhs as earnest money. However, later on he retracted from executing the sale deed in favour of the plaintiff and regarding that the plaintiff would be filing a separate suit for specific performance. It was claimed in the end that defendant was a stranger to the suit property and therefore, was wrongly threatening to dispossess him from the suit property and was illegally interfering in his peaceful possession.

Defendant appeared in the suit and filed written statement. Besides taking ordinary preliminary objection it was pleaded on merit that contrary to the claim of the plaintiff, the entire suit property was not agricultural land, rather building of A.P.Solvex is in existence in khasra No. 620/90/0-4 and house as well as "*pahi*" are in existence in one bigha out of

khasra No. 1017/100. It was further pleaded that the suit land comprised in khewat No. 82 which measured 607 bighas 6 biswas and in which defendant is one of the co-sharer. Out of the suit property the defendant is in possession of the property shown in the site plan attached with the written statement. It was further pleaded that his mother had constructed two shops in the suit property in the year, 2007 and that the defendant is owner in possession of these shops and also in possession of the agricultural land shown in the site plan. It was further pleaded that the defendant had given his land on lease to one Tehal singh son of Ranjit Singh. It was further pleaded that the plaintiff was well aware of the actual position but has concealed the material fact. It was further pleaded that existence of shop in khasra No. 1019/101 are duly reflected in the revenue record and these were earlier given on rent with a wine contrator. It was further pleaded that the suit property was in possession of his mother. Regarding the agreement to sell it was pleaded that although the defendant had entered into agreement to sell dated 12.01.2011 for 5 bighas of land. However, the plaintiff himself failed to get the sale deed registered since he had no money for that purpose and the earnest money received by the defendant from plaintiff stood forfeited.

In replication, the plaintiff admitted that the name of A.P.Solvex is reflected in khasra girdwari in khasra No. 620/90/0-4 but the name of A.P.Solvex is reflected only because company has stored paddy husk in the said khasra number with the consent of the plaintiff. The other averments were denied.

Parties led their evidence.

After hearing learned counsel for the parties, the Trial Court

dismissed the suit filed by the plaintiff. While dismissing the suit, the Trial Court held that revenue records shows the defendant (respondent herein) is co-sharer with the plaintiff (appellant herein). It was further held that co-sharer has every right to sell his share out of the suit property. It was further held that the plaintiff has not come to the Court with clean hands and did not show complete record. It was further held that although the plaintiff has admitted the existence of A.P.Solvex, who own some part of the suit property, however, in this regard also the plaintiff was making his claim. The revenue record shows the existence of a factory on some part of the suit property and it does not show any existence of any rooms in the suit property, as claimed by the plaintiffs. Hence it was held that the claim of the plaintiffs be falsified.

Aggrieved of this judgment and decree passed by the Trial Court, the plaintiff filed appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. While dismissing the appeal filed by the present appellant the lower Appellate Court has recorded a finding that the plaintiff had claimed exclusive ownership and possession over the suit property whereas the revenue record shows the property to be a joint property. It was held that the defendant was duly recorded as a co-sharer in the suit land; alongwith other properties. It was further held that the claim of the plaintiff that he had sown crops in the entire suit land also stands belied by the facts that EX:P-3 shows existence of building and the plant of A.P.Solvex over some part of the suit land. Besides this, the khasra girdwaries show the possession of defendant over khasra No. 1019/101 and 1021/102 which pertains to the same khewat in which the plaintiff claims to have purchased

the land. It was further held that the defendant had every right to sell his share out of the suit land. In case he sells the share the plaintiff still would have remedy of partition and getting his share separated.

Aggrieved against this judgment and decree passed by the lower Appellate Court, the present appeal has been filed by the plaintiff.

Having heard learned counsel for the appellant and perusing the record; this Court finds itself in agreement with the Courts below. It has been proved on record that the defendant is a co-sharer in the suit property. Therefore, the plaintiff/appellant herein had a remedy to seek partition of the property in accordance with law. However, no injunction could have been granted against a co-sharer in the facts of the present case. The revenue record categorically shows the defendant to be a co-sharer. Even the prayer made by the plaintiff in the plaint shows that the defendant is a co-sharer in the suit property, because, the prayer made by the plaintiff is that the defendant should not interfere with the possession of the plaintiff except in accordance with law. It is a settled law that every co-sharer is owner of every inch of land and is in joint possession of the entire joint property till the same is partitioned between the parties. Hence the Court below have not committed any illegality or perversity in passing the judgments and decrees. Therefore, the same are upheld.

Having failed in his attempt in the appeal, learned counsel for the appellant has made a prayer that he be permitted to withdraw the suit and judgment and decree passed by the courts below be modified accordingly. It is his further submission that while permitting him to withdraw the suit he be granted permission to file a suit again for similar purpose. To support his prayer, learned counsel for the appellant has relied upon the judgment of the

Hon'ble Supreme Court reported in **2014(13) SCC 646** titled as ***M/s Hotel Queen Road Pvt. Ltd. & Ors. vs. Mr. Ram Parshotam Mittal & Ors*** and the judgment of the Kerala High Court reported in **AIR 1987 Kerala 246** titled as ***Ammini Kutty and others vs. George Abraham***.

However, this Court does not find itself in agreement with the submission made by learned counsel for the appellant. The judgments cited by learned counsel for the appellant are distinguishable on the facts of their own case. The judgment of the Hon'ble Supreme Court rendered in ***M/s Hotel Queen Road Pvt. Ltd. & Ors.(supra)*** relates only to extending the interim order, if the Court is permitting to withdraw the appeal, with permission to seek alternative remedy. In case of ***Ammini Kutty and others (supra)*** the permission to withdraw the suit was granted because the Court had dismissed the suit for injunction by observing that the plaintiff should have filed a suit for declaration of title. Therefore, it was held that permission to file the suit for declaration was rightly granted. However, in the present case there is no such ground to grant any permission to the appellant to file a fresh suit for a similar purpose. The present suit was contested between the parties. Findings have been recorded in favour of the defendants. Although the defendants may not have any vested right to claim existence of those finding for ever, however, the findings so recorded in their favour cannot be nullified merely on the asking of the plaintiff (appellant herein). The appellant has not disclosed as to what suit he wants to file after withdrawing the present suit and after seeking permission from the Court. If he is to file a suit for partition regarding the joint property, then he does not need any permission from the Court. He can otherwise file suit/proceeding for partition of the suit property, if he so thinks fit. But if

he intends to file a suit for injunction once again, by seeking permission to withdraw the present one, then it would tantamount to misuse of the process of the Court and would result in undue harassment and injustice to the defendant. Hence, there is no ground to grant any permission to the appellant to file a fresh suit on the same cause of action.

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

In view of the above, the judgment and decree passed by the learned Courts below are upheld. The present appeal is dismissed being devoid of any merits.

26th July, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *No*