

RSA No. 3058 of 2017 (O&M)

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

**RSA No. 3058 of 2017 (O&M)
Date of decision: 03.10.2017**

Salamudeen and others

...Appellants

versus

Riasat Ali and others

...Respondents

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

Present : Mr. Fateh Saini, Advocate for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)

1. This is plaintiffs' second appeal in a suit for permanent injunction restraining the defendants from interfering in their peaceful possession of 8 kanals corpus land falling in the revenue estate of Barara, District Ambala. It is not in dispute that plaintiff-Salamudeen admits being a co-sharer of certain properties left behind by his father to his sons. He is one of them. The suit has been dismissed by the Civil Judge, Junior Division, Ambala by judgment and decree dated 04.03.2016 which has been affirmed in appeal decided by the learned District Judge, Ambala vide his judgment and decree dated 05.04.2017. This second appeal arises from the appellate decree.

2. The plaintiffs claim to be in exclusive possession of the land described in the head note of the plaint, but, it appears not to have been established as a fact whether any oral partition had taken place in the past which by consent of co-sharers, the joint agricultural land was

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divided for separate cultivation and due to such arrangement the plaintiffs and the other co-sharers have been in settled exclusive possession of their respective shares. The best evidence would have been to confront court with the revenue records since the settled position is that each co-sharer owns every inch of the land till it is not divided by sharers, each physically coming into possession by operation of a partition decree. This is not the case here.

3. Learned counsel for the appellants submits that right to property is not only a civil right but a constitutional right under Article 300A of the Constitution of India guaranteeing that persons are not to be deprived of property save by authority of law as established. But the plaintiffs are not being deprived of their property when they are co-sharers. The civil facet of the principle is that no one can be forcibly dispossessed except in accordance with law. This argument seeks to lift the case more than what is required for decision. No one has deprived the plaintiffs of their right to property. They are not facing an action by the other co-sharers to disturb their ownership rights.

4. The question here in a suit for permanent injunction is that there is no positive indication forthcoming from the materials on record of long settled possession by the position of the foot when possession is commonly regarded as nine-tenths of the law. It is equally well-settled that an injunction will not issue to a co-sharer unless it is beyond cavil that possession is remained exclusive and continuous by consent or by an oral partition the co-sharers accept by agreement among the co-

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sharer in land agricultural in nature.

5., I would, therefore, not merrily accept the argument of the learned counsel that this is a fit case for admission or for entertainment in second appeal where the Court would not enter into the dispute on facts which have been appreciated on the evidence produced before the Courts *a quo*. Even an error of fact would not give rise to a question of law for the consideration on the second appeal side either under Section 100 CPC or Section 41 of The Punjab Courts Act, 1918. I find no manifest error in reasoning or misreading of the evidence.

6. As a matter of fact, plaintiff-Salamudeen deposed in his testimony as PW-1 admitting that he is not aware with regard to the portion in which he is in possession along with other plaintiffs, this is recorded in paragraph No.7 of the trial Court order and has not been shown to be incorrect except the diversion by counsel that this testimony was not regarding the 8 kanals claimed by the plaintiffs in the suit to be in his cultivating possession but refers to the other portions of the co-sharers. It is not even been set out in the plaint nor in the evidence that the property of the co-sharers was a single piece of land or was it in chunks or in parts flung apart from each other so that possession could have been better understood in this case.

7. Vagueness will not bring plaintiffs any relief when he fails to discharge the burden of proof to show that he was in actual physical possession of the suit land and tilling it exclusively to the knowledge of the co-sharers accepting the position. He has no independent khasra

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girdawaris to show in his favour and a mere stray entry in one jamabandi will not establish possession to maintain the suit and establish right to particular part of the joint property. The Courts below are correct in suggesting that the plaintiffs have not sought partition of the land in dispute to establish exclusive possession and in that suit claim interlocutory orders of protection, if law permits.

8. I will, therefore not interfere in this appeal and dismiss it.

(RAJIV NARAIN RAINA)
JUDGE

October 03, 2017

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Whether speaking/reasoned : Yes

Whether reportable : No