

Sr. No. 107

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

**RSA No. 4268 of 2017(O&M)
Decided on: 8.09.2017**

Purshotam Dass and others

.....Appellants

versus

Ashok Kumar and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Aashma Gill, Advocate for
Mr. Aman Pal, Advocate
for the appellants.

Rajbir Sehrawat, J.(Oral)

This is second appeal filed by the plaintiffs against the concurrent findings recorded by both the Courts below, dismissing their suit for mandatory injunction seeking a removal of the construction of other co-sharer in the property.

The brief facts of the case are that the plaintiffs claim that they purchased land measuring 6 kanals 16 marlas out of the land comprised in khewat No. 1152/1106, khatoni No. 1414, rect. No. 58 killa No. 11(8-0), 13/1(1-6), 18/2(2-6), 19(8-0), rect. No. 59 killa No.14(8-0) 15(7-12). It was further claimed by the plaintiffs that other co-sharers in the land in question have raised construction without the consent of the plaintiffs and that they refused to stop construction in specific killa numbers and have carved out plots and roads to convert it into colony without consent of the plaintiffs.

The defendants herein who are 15 in number filed written statement that the defendants have raised construction over the plots

purchased by them. When the construction was being raised, the plaintiffs had not raised any objection. They have spent huge amount on construction; only on the plots which they purchased with specific boundaries. It was further pleaded by the defendants that they are co-sharers and are in possession of specific portion of the land out of joint holding marked by specified the boundaries. Therefore, they are in exclusive possession of specific area. It was pleaded by the defendants that suit filed by the plaintiffs is not maintainable and no injunction can be granted against co-sharers. It was further pleaded that they have not raised the construction over area more than what they have purchased and they were in exclusive possession of the specific area, therefore, they have every right to raise construction.

Parties led their evidence. After appreciating the evidence led by the parties, Trial Court dismissed the suit filed by the present appellant.

Aggrieved against the judgment and decree passed by the Trial Court, the present appellants/plaintiffs filed appeal before the lower Appellate Court. However, the lower Appellate Court dismissed the appeal filed by the present appellants. Hence, the present appeal.

While dismissing the appeal filed by the present appellants, the lower Appellate Court has recorded a finding that it has come on record that though the land, is agriculture land, however, it is not under cultivation. No crops are shown to have been sown in the land in question. Rather it is admitted by the plaintiffs that the houses have been raised over the land in question. The next finding recorded by the Court below is that the land in question has been sold in the form of plots measuring 30 x 75 sq. ft. and of similar sizes and with specified boundaries. Therefore, by no means it can

be presumed that the land is agriculture land or it continue to be a joint holding in the name of all the purchasers. Lower Appellate Court has also recorded a finding that Local Commissioner was also appointed by the Court and he also reported that there are 6 houses in existence on the spot. Even PW-1 Vinod Kumar in cross-examination has admitted that there are roads and pucca houses constructed on the various plots. It is also admitted by him that the land was not being used for cultivation purposes any longer. Therefore, the lower Appellate Court has come to the conclusion that the land cannot be treated to be joint any more and therefore, the Trial Court has rightly dismissed the suit filed by the plaintiffs.

Learned counsel for the appellants has argued that since purchase was of the shares only, therefore, none of the co-sharer had any right to raise construction and the construction raised on the plot is illegal and the same deserves to be demolished. It is further argument of learned counsel for the appellants that wrong presumptions have been raised by the Courts below regarding the partition between the parties whereas no evidence has been led by the defendants in this regard.

After hearing learned counsel for the appellants and perusing the available records, this Court is of the view that there is no illegality or perversity in the findings recorded by both the Courts below. It has been admitted by the appellants themselves that there are constructions on the scattered portions of the land in question whereas the plaintiff claims it to be joint. However, when constructions have been raised by various co-sharers/plot holders that definitely indicates the status of the land as not joint anymore. Not only this, it has also come in evidence that the land in question was sold to the defendants, by specifying the boundaries of the

land which was sold to them. Therefore, in view of this also it is clear that the land was no more joint, qua the persons who have raised the constructions or who had purchased the land with specified boundaries. If the plaintiffs had any grievance against raising of the construction by the co-sharers he should have raised the objection at the time when the construction was being raised. Having acquiesced into the construction being raised by defendants, the plaintiffs also have impliedly agreed to the severance of the status of the land.

Otherwise also, since the constructions have been raised and the properties have been purchased by defendants with specific boundaries, therefore, this shows that the persons purchasing the plots were put in possession of the specific portion out of the joint holdings. In view of this situation, co-sharers can very well raise construction over that portion of the land which he specifically purchased and were put into possession. Therefore, the plaintiffs who claimed to be co-sharer are not entitled to seek injunction against the co-sharers who were in possession of the specific area of the land and have already raised the construction thereon.

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

In view of the above, the present appeal fails and the same is hereby dismissed.

8th September, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*