

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.914 of 2017 (O&M)
Date of Decision: May 23, 2017

Partap Singh

..Appellant(s)

Versus

Kanwardeep Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amardeep Singh Gill, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This is the plaintiff's second appeal aggrieved by the dismissal of his suit. The appeal has been filed only by Partap Singh-plaintiff no.1 through the Attorney.

Partap Singh and Gurdeep Singh filed a suit through their attorney, Swaran Singh seeking permanent injunction and restraint of the defendants from removing the soil or from changing the nature of the property. The plaintiffs had claimed that defendant no.2 was a co-sharer. Defendant no.1 was his son. It was claimed that the plaintiffs through their power of attorney had entered into an agreement to sell with defendant no.1 with respect to the suit property but the copy of the agreement had not been handed over to the plaintiffs. It was pleaded that earlier also there was some litigations between them regarding which a compromise was effected and a writing was executed on 19.01.2008. It was pleaded that under the garb of the agreement to sell the defendants were trying to take and

remove the soil and were trying to raise construction over the suit land and change the nature of the property.

The defendants took the plea that the plaintiffs were not entitled to injunction and the effective remedy was to file a suit for partition or suit for specific performance. It was pleaded that defendant no.2 was a co-sharer and he had purchased over 7 acres of land from other co-owners and he was in exclusive possession of some khasra numbers which were disclosed in the written statement. It was further claimed that vide agreement dated 22.10.2007 the plaintiffs had agreed to sell their land. Vide another agreement dated 22.10.2008 the plaintiffs through their attorney leased out the land which was subject of the agreement to sell to defendant no.1 for a period of one and a half year and the plaintiffs had received the lease money. It was pleaded that the possession of the land was with defendant no.1. It was pleaded that the suit has been filed as a pressure tactic and to prepone the performance of the agreement and the suit for injunction was not maintainable.

On the pleadings of the parties following issues were framed:-

1. Whether plaintiff entered into an agreement to sell with the defendant no.1 regarding the suit property? OPP
2. Whether the plaintiff is entitled for the relief of injunction? OPP
3. Whether the suit is not maintainable? OPD
4. Relief.

Issue no.1 was subsequently deleted.

It is necessary to notice here that plaintiff no.2 during the pendency of the suit sold his share to the wife of plaintiff no.1. She was not impleaded as a party. It also came on record that both the plaintiffs were permanent residents of U.S. and were permanently settled there. Plaintiff no.1 came to India only in May, 2013. The suit was filed in 2009. The GPA was given to Swaran Singh in 2004. It had also come on record that plaintiff no.2 - Gurdeep Singh had died in 2013.

The trial Court dismissed the suit holding that there was no evidence to show that the defendants were causing any damage to the property. It was held that the plaintiffs had to seek the remedy of partition and in case the defendants had removed the soil that aspect could be considered by the Revenue Authorities while proposing the mode of partition and the suit for injunction was not maintainable against the co-sharer.

The appeal preferred by Partap was dismissed.

I have heard the counsel for the appellant at length.

The main submission on behalf of the appellant is that the plaintiff was to only prove that the defendants were trying to change the nature of the property and were removing the soil and there was a stay order which had been violated and the digging continued and they had led evidence and photographs were produced to prove that despite the stay order soil was being lifted. The counsel has taken me through the statement of the witnesses as well as the photographs which were available on record.

The record has two site plans, one was prepared at the time of filing of the suit. It does not indicate the spot where the digging was being carried out. The site plan Ex. P-16 was prepared on 18.07.2014. The Draftsman had stated that Partap Singh had taken him to the spot and he had also signed the site plan. The site plan does not bear his signatures. It was not even show that Partap Singh was in India on that day. Admittedly a suit for specific performance of the agreement is pending. The counsel after verification had informed that the suit was pending for 7th July 2017. The counsel has stated that they were disputing the agreement as the agreement was forged and that aspect was not to be considered in this case.

The counsel for the appellant had relied upon ***Charan Singh Vs. Kewal Krishan alias Kewal Singh 2016(1) PLJ 216, Ram Niwas Vs. Jai ram alias Tej Ram 2000(3) CCC 379 (P&H)*** and ***Bhartu Vs. Ram Sarup 1981 PLJ 204*** and had urged that a co-owner cannot be allowed to raise construction detriment to the interest of the other co-owner and they had proved on record that the defendants had a brick-kiln in the village and soil was being dug from the land and the value of the property had diminished. It was urged that a suit for partition had been filed subsequently. The counsel was unable to give the date of filing.

I have gone through the judgments referred to by the appellant. The rights and liability of a co-sharer have been settled in ***Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528*** and the following propositions were settled:-

- 1. A co-owner has an interest in the whole property and also in every parcel of it.*
- 2. Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.*
- 3. A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
- 4. The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.*
- 5. Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
- 6. Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
- 7. Whether a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.*

In **Charan Singh's** case (supra) relied upon by the appellant the proceedings of partition were pending before the Revenue Authorities when a suit for injunction was filed and it was in that context the stand of the defendant was rejected. The concluding lines of the judgment read as under:-

“The argument by the counsel is that the remedy ought to have been to apply for partition by the plaintiff himself is a course that has been admittedly adopted by the plaintiff already. If proceedings for partition are pending, the revenue authorities will not be competent to order injunction for that relief would fall within the exclusive domain of a civil court and the plaintiff was justified in seeking for such a relief. The case was correctly rejected and the relief of injunction granted by the appellate court would require no intervention.

Second appeal is dismissed on the above terms.”

The remedy of a co-owner whether in possession or not in possession of the entire share is by way of a suit for partition and he cannot ask for injunction without first approaching the appropriate Court for partition. In the present case, the plaintiff had been unable to show that any earth was being lifted from the suit property. Both the Courts have dealt with this issue in detail and there is no reason to take a different view. It was admitted that the appellant had filed an application for initiating proceedings under Order 39 Rule 2-A CPC but that plea was rejected and the photographs and the material produced by the plaintiff in those proceedings could not be connected to the suit property.

I see no infirmity in the findings recorded by both the Courts below. The findings are affirmed and the appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

May 23, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No