

RSA-1044-1992 (O&M)

**1604 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1044-1992 (O&M)

Date of decision : 17.12.2018

Parkash Chand (D) through LR's and another

... Appellants

Versus

Tirath Ram (D) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. Pawan Kumar Longia, Advocate for the respondent(s).

AMIT RAWAL, J.

The appellants-plaintiffs are, in the present regular second appeal, against the concurrent findings of fact, whereby the suit for permanent injunction seeking restraint order against the defendants/respondents being brothers, not to alienate the suit property as the status of the parties on account of death of their father was of a co-sharer was dismissed and affirmed in appeal.

It was stated that Jawala Parshad, common ancestor, had executed a registered Will dated 13.07.1959 and the parties carried on business under the name and style of M/s Jawala Parshad Tirath Ram and had been living jointly, but on 01.03.1964, separated themselves in mess, residence and business too. The aforementioned firm was converted into partnership firm w.e.f. 01.04.1964. Thereafter, the plaintiffs flourished in their business, which was an eyesore for the defendants and started extending the threats, therefore, the suit aforementioned was filed.

Defendant No.1 contested the suit and relied upon the arbitration award, dated 23.08.1982, whereby the whole of the property was

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divided amongst the co-sharers.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the plaintiffs are entitled to the injunction as prayed for in respect of the properties in dispute? OPP*
2. *Whether the suit of the plaintiffs is within time? OPP*
3. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
4. *Whether no cause of action has arisen to the plaintiffs for filing the present suit? OPD*
5. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
6. *Whether the plaintiffs are estopped from filing this suit by their own act and conduct? OPD*
7. *Whether the plaintiffs have not come to the Court with clean hands? OPD*
8. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
9. *Relief.*

The plaintiffs examined four witnesses and brought on record Ex.P1 to Ex.P3, whereas the defendants examined nine witnesses and brought on record Ex.D1 to Ex.D7.

The trial Court dismissed the suit and the appeal taken before the lower Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellants-plaintiffs submitted that once the partnership deed had already been proved after conversion of the firm, all the parties were separated and carrying on business and were in their respective possession, thus, partition was impliedly effected and proved. If a person is in exclusive possession, the other co-sharer cannot be permitted to dispossess forcibly or illegally or interfere, thus, there is a gross illegality and perversity. He also drew the attention of the interim order dated dated 31.07.1992, whereby the

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respondents were restraint from alienating the suit property in dispute.

Learned counsel for the respondents-defendants supported by the judgments and decree, under challenge, by stating that the arbitration award has been proved. The property was already partitioned and the plaintiffs miserably failed to prove the possession, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain, for, the findings of fact arrived at by the Courts below holding that partition of the property had already been proved on record. The plaintiffs, in order to succeed in claiming injunction, failed to establish the exclusive possession with regard to the suit property. It is a settled law that where a person is not in exclusive possession, the remedy is to seek the partition and not injunction. It has not come on record that what was the fallout after the arbitration award regarding possession.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

17.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**