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

Date of decision : 19.02.2018

1.

RSA-636-1992 (O&M)

Randhir Singh and others

... Appellants

Versus

Bhim Singh and others

... Respondents

2.

RSA-658-1992 (O&M)

Deep Chand (deceased through LRs) and others

... Appellants

Versus

Ajit Singh

... Respondent

3.

RSA-657-1992 (O&M)

Deep Chand (deceased through LRs) and others

... Appellants

Versus

Ajit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatin Khurana, Advocate for
Mr. Roopak Bansal, Advocate
for the appellant(s).

Mr. G.S. Hooda, Senior Advocate with
Mr. C.S. Singh, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of the three appeals bearing

RSA No.636 of 1992 titled as “Randhir Singh and others V/s Bhim Singh and others”, RSA No.658 of 1992 titled as “Deep Chand (deceased through LRs) and others V/s Ajit Singh” and RSA No.657 of 1992 titled as “Deep Chand (deceased through LRs) and others V/s Ajit Singh”, filed against the concurrent findings of fact, whereby two suits one bearing No.289 of 1985 titled as “Randhir Singh and another V/s Bhim Singh and others” (in short '1st suit') seeking permanent injunction, has been dismissed by both the Courts below and second bearing No.142 of 1986 titled as “Ajit Singh V/s Deep Chand and others” (in short '2nd suit') seeking permanent injunction, has been partly dismissed.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The plaintiffs instituted the suit on the premise that they were owners in possession of a house along with Sehan in equal shares. The Eastern portion of the house was owned by Ranbir Singh and the western portion as shown in the site plan attached was owned by Randhir Singh. A partition took place about more than 20 years ago due to domestic quarrel and during that partition, the eastern portion fell to the share of Ranbir Singh and the western portion fell to the share of Randhir Singh. The defendants were the uncle's sons of the plaintiffs. The defendants had threatened to interfere with the possession of the plaintiffs. Hence the 1st suit.

The defendant Nos.2 and 3 contested the suit by filing a written statement on the ground that the father of the plaintiffs and defendant No.2 were owners of the suit property jointly in equal shares as they had purchased an area of 476 sq. yards vide registered sale deed dated

30.07.1947 in equal shares. Thereafter, the fathers of the plaintiffs and defendant No.2 partitioned the disputed property and the eastern portion fell to the share of the father of the plaintiffs and the western portion fell to the share of the father of defendant No.2. Since then the fathers of the plaintiffs and defendants had been in their respective possession. The western portion of the suit property was sold by father of defendant No.2 to defendant No.2 for a sum of ₹25,000/- vide registered sale deed dated 26.03.1985, wherein one temporary *kotha* and four walls had been constructed, therefore, there was no question for forcible dispossession or interference.

The 2nd suit was instituted by Ajit Singh against his uncle Deep Chand and Ranbir Singh and Randhir Singh, who were the plaintiffs in the 1st suit. The plaintiff Ajit Singh had claimed ownership and possession over the western plot which shown in yellow colour in the site plan Ex.P3 and in red colour in the site plan Ex.D2, on the ground that the defendant-Deep Chand had threatened to take forcible possession of the dispute plot.

The aforementioned suit was also contested by the defendant-Deep Chand on the ground that in the year 1965, a family partition had taken place, in which, Deep Chand received the disputed land and now the defendant Nos.2 and 3 (plaintiffs of the first suit) had constructed their houses over the suit property.

The trial Court on the basis of the preponderance of the evidence dismissed both the suit. However, the lower Appellate Court also dismissed the 1st suit and partly dismissed the 2nd suit. It is, in this backdrop of the matter, the aforementioned three appeals have been filed.

Learned counsel appearing on behalf of the appellants submits that the both the Court below have committed illegality and perversity as the

suits were for permanent injunction against each other, which were consolidated by both the Courts below, but the fact of the matter is that the appellants and the respondents are the co-sharer in the suit property. Since the joint owners were there, there was no occasion for the Courts below to decline the relief, particularly when the plaintiffs had been found to be in exclusive possession. The suit for injunction against a co-owner, if one of the co-sharers is in exclusive possession, is maintainable. The respondents already admitted the house in dispute was partitioned and the separate possession was taken. In view of this admission being dispute from either side, the lower Appellate Court could not hold this to be a bad for partial partition. The Courts below have committed an error in holding that exchange of suit property required registration, though in State of Haryana, oral exchange was permissible. The Courts below ought to have taken into account Ex.P-2, proved by two witnesses. The finding of the Courts below that the appellants were not the absolute owners and respondents also co-sharers in the disputed property is neither here nor there, thus, urges this Court for setting aside the judgments and decrees under challenge as there is a gross illegality and perversity.

Mr. G.S. Hooda, learned Senior Counsel assisted by Mr. C.S. Singh, learned counsel appearing on behalf of the respondents submits that the finding of the Courts below do not call for interference as from the evidence brought on record, it has been proved that the plaintiffs were not in actual physical possession of any portion of the land, in dispute, whereas the entire physical possession of plot measuring 476 sq. yards was in favour of Ranbir Singh. Once Deep Singh and Hera Singh had purchased the property in equal share and after death, their sons became owners along

with Randhir Singh. The sale deed executed by Hira Singh in favour of defendant No.2 and declaratory decree suffered by Deep Chand, was a subsequent transaction, therefore, it did not create any title. The parties to the *lis* would co-sharers of the land in dispute and therefore, the remedy for the parties was to seek the partition. Though the lower Appellate Court partly accepted the appeal of Ajit Singh against the judgment and decree in 2nd suit, to the extent that the possession of one of the co-sharer was of all the co-sharer and dismissed the 1st suit by holding that the plaintiffs have not been able to establish the possession.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Khurana, for, it has been established on record that Ajit Singh was recorded as co-sharer and every co-sharer has possession of every inch of land. For the purpose of injunction, the plaintiffs are required to lead un-blemished and unclenching evidence to establish the long and settled and exclusive possession. No evidence in this regard has been led. Had it been so, perhaps the injunction could have been granted. For proving Ex.P2, neither the scribe nor the signatures of Hira Singh was examined or proved. Any exchange entered into between the parties should have reflected in the revenue record, even if it assuming for an argument sake that it did not require any registration. The plaintiffs miserably failed to disclose the existence of number of houses, how much land was in village Kheri Dahiya. All these evidence were required to be brought on record in order to enable them to succeed in the suits with regard to the injunction. The findings of the lower Appellate Court with regard to recording the status of Ajit Singh as co-sharer, in my view, is a correct appreciation of

provisions of law.

Keeping in view the aforementioned facts, I do not intend to different with the findings rendered by the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeals are dismissed.

19.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No