

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

**RSA No. 536 of 1994(O&M)  
Date of decision : 20.03.2018**

**Prem Raj alias Prem Chand**

**..... Appellant**

**versus**

**Gurdial Singh(since deceased)represented  
through his LRs**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE AMIT RAWAL**

**\*\*\***

Present: Mr.Vikas Singh,Advocate for the appellant.

Mr.Sukant Gupta, Advocate for the respondents.

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**AMIT RAWAL, J. (Oral)**

In the order dated 16.08.2010, presence of Mr.Sukant Gupta, Advocate has been marked for the appellant and the same is ordered to be corrected.

The defendant-appellant is in Regular Second Appeal against the judgment and decree dated 21.08.1993 passed by Lower Appellate Court court whereby suit for perpetual injunction instituted by Gurdial Singh had been decreed and the judgment and decree dated 02.04.1990 passed by the trial Court had been reversed.

The facts as emanated from the record of the Court below reveals that the respondent-plaintiff instituted the suit against the appellant-defendant for permanent injunction seeking restraint from alienation in any manner of the land measuring 17 kanals 12 marlas as per Khasra Number mentioned in the head note of the plaint on the premise that the plaintiff

along with other co-sharers was joint owner in possession of the suit land. The defendant claimed to be exclusive owner of the suit land in view of the auction which was surreptitiously held by the Government in his favour as well as issuance of sale certificate. The co-sharer instituted a suit against Kartar Singh as well as Prem Raj while challenging the sale/auction in the civil court and the civil court vide judgement and decree dated 20.08.1983 set aside the proceedings of auction. The aforementioned judgment and decree was assailed by the aggrieved party but the same was dismissed on 16.10.1986. The revenue department thereafter did not sanction the mutation but despite that the respondent was proclaimed to be owner of the property and was attempting to forcibly dispossess plaintiff which necessitated the institution of the aforementioned suit. The appellant-defendant contested the suit and submitted that against the judgment and decree dated 16.10.1986, RSA was filed before this court which was pending. The trial Court on the basis of pleadings framed the following issues:-

1. Whether the plaintiff is co-owner in possession of the land in dispute?OPP
2. Whether the plaintiff is entitled to the injunction restraining the defendant from disposing of the land in dispute?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has no locus standi to file the suit?OPD
5. What is the effect of the pendency of the appeal in the Hon'ble High Court against the judgment and decree dated 16.10.1986?OPD
6. Relief.

Both the parties led evidence and found that the allotment in favour of the appellant-defendant had been cancelled by the Lower Appellate Court. The trial Court dismissed the suit on the ground that since

the matter against the judgment and decree dated 16.10.1986 was pending before High Court but the appeal laid before the Lower Appellate Court was allowed in terms of the RSA No. 885 of 1987 preferred against the judgment and decree dated 16.10.1986 of the Lower Appellate Court and found that since there was no right enured in favour of the auction purchaser until and unless the sale was restored, decreed the suit.

Mr.Vikas Singh, learned counsel appearing for the appellant and Mr.Sukant Gupta, learned counsel appearing for the respondent made a joint statement that an RSA No. 885 of 1987 preferred by the appellant-defendant against the judgment and decree dated 16.10.1986 rendered by the Lower Appellate Court had been dismissed by this Court vide judgment and decree dated 10.10.1987.

In this view of the matter I am of the view that the injunction granted by the Lower Appellate Court is the most innocuous and justified one that the person who has not been held to be owner cannot forcibly or illegally dispossess the plaintiff. As an upshot of facts, I do not find that the judgment and decree of the Lower Appellate Court suffer from any illegality or perversity.

Resultantly the appeal is dismissed.

**(AMIT RAWAL )**  
**JUDGE**

**20.03.2018**  
**sunita**

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No