

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

**RSA No.687 of 1996 (O&M)
Date of Order: 10.12.2018**

Gian Singh

..Appellant

Versus

Darshan Singh and another

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.S.Brar, Advocate,
for the appellant.

Mr. Harsh Bunger, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant, who has purchased undivided share in the property from Harbhajan Singh, one of the co-sharer, is in the appeal against the judgment passed by the learned first appellate court, declining the relief of permanent injunction against other co-owners from interfering in possession of the plaintiff.

It is undisputed that out of the joint land owned by Harbhajan Singh and other co-sharers, plaintiff purchased the land measuring 18 kanals vide sale deed dated 01.09.1989. Sons of Harbhajan Singh had already filed a suit for injunction in which injunction was granted in their favour. However, a sale in violation of injunction would not be invalid.

Once plaintiff-appellant has become co-sharer, question is whether he has a right to seek injunction particularly when there is no evidence that he was ever put in actual physical possession of the land in dispute.

No doubt, in the sale deed it has been recorded that possession of the land in dispute has been delivered, however Harbhajan Singh was not living in village for the last 4 years. He was residing in the city Banga. Ajit Singh, who has been examined as PW3 by the plaintiff has admitted that it is the defendant who also used to cultivate the land including share of Harbhajan Singh. He further goes on to say that partition of the property has taken place and partition deed is in possession of the plaintiff, however, the aforesaid document has not been produced on file. Still further, Ajit Singh PW3 has stated that the land was not cultivated by Harbhajan Singh himself for the last 4 years but he used to get it cultivated through tenant-Piara Singh. However, no documents in support thereof has been placed on the file.

Learned counsel for the appellant while referring to Ex.P2, copy of the jamabandi for the year 1986-87, has submitted that with regard to land in dispute Harbhajan Singh is recorded in exclusive possession. This court has seen Ex.P2 jamabandi for the year 1986-87, Harbhajan Singh is no doubt recorded as one of the co-sharer but he has not been recorded in actual physical possession of the land in dispute. Still further it has been proved on file that Harbhajan Singh was not residing in the village.

Learned counsel for the appellant further submitted that the sale deed executed in favour of the appellant was subject matter of challenge at the hands of the sons of Harbhajan Singh, but the suit has been dismissed.

However, learned counsel could not draw attention of the court to finding in the subsequent suit that it is the plaintiff who is in possession. Once a subsequent purchaser purchases an undivided share in the joint khewat and there is no evidence that the subsequent purchaser was put in

possession of any specified parcel of the land, the remedy for him is to seek possession by getting the property partitioned.

In view of the aforesaid, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court. The regular second appeal is dismissed.

December 10, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No