

In the High Court of Punjab and Haryana at Chandigarh

RSA-1099 of 2010(O&M)

Date of Decision:7.5.2018

Smt. Krishna

---Appellant

vs.

Balwant and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjiv Gupta, Advocate
for the appellant
Respondent Nos. 1 and 2 ex parte
Mr. D.S.Nain, Advocate
for respondent No. 3

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction filed by the plaintiff/appellant was dismissed by the trial court vide judgment and decree dated 17.5.2007 and appeal preferred against the judgment and decree passed by the trial court did not find favour with the Additional District Judge, Sonapat.

In brief, the facts of the case are that the appellant alongwith respondents/defendants is a co-sharer in agricultural land measuring 216 kanal 16 marlas situated in the revenue estate of village Kharkhoda, District Sonapat, detailed in para 1 of the plaint. It is averred that no co-sharer is in exclusive possession of any specific portion of land and all the co-sharers

have the right to use the land. The respondents illegally and forcibly want to take possession of specific killa numbers situated on the road side and raise construction thereon with a view to change nature of the land but they have no right to do so. Details of the land situated on Kharkhoda -Sehri road are as under:-

“87/11, 20/1, 19,22/2, 104/3, 7, 8/1, 14/2, 15, 16/1”

The aforesaid land is more valuable viz-a-viz the other land in the said khewat.

Respondents No. 1 and 2 filed their joint written statement with the plea that they would not take possession of any specific killa numbers or raise construction thereon without getting the land partitioned.

Respondent No. 3 filed the written statement and raised preliminary objections inter alia that the suit is not maintainable; suit is barred under Order 2 Rule 2 of the Code of Civil Procedure (in short “the Code”) as well as by principle of *res judicata*; the appellant is guilty of concealing material facts; the appellant has filed the suit by ignoring the maxim 'one who seeks equity must do equity'; the suit is barred under Section 41 of the Specific Relief Act and; bad for non-joinder of necessary parties. The land has already been partitioned mutually and co-sharers are in possession of their separate killa numbers. As per revenue record, the suit land is joint and is being used for agricultural purposes and certain co-sharers have built their houses, poultry farm etc. and raised other construction, thus, are in exclusive possession of their specific portions. The vendor of the answering respondent was in possession of killa No. 104/14/2 (4-0) (East) at the time of registration of sale deed dated 20.1.1998 and handed over possession of that very killa number to the

respondent. The answering respondent is in actual physical possession of purchased land and has every right not only to remain in actual possession but also to use the same in any manner. The appellant has no cause of action and the plaint is liable to be rejected under Order 7 Rule 11 of the Code.

The trial court framed issues vide order dated 19.7.2004 and additional issues on 3.4.2007, reproduced in paras 6 and 7 respectively of the judgment. The parties were permitted to adduce evidence in support of their respective claims.

After having heard counsel for the parties in the light of materials on record, the trial court determined issue No. 1 by recording findings in the concluding lines of para 12 of the judgment that the appellant is not entitled to the relief of injunction against the other co-sharers to the effect that defendants should not alienate the land or should not alienate any specific killa number without getting it partitioned. Ultimately, suit of the appellant was ordered to be dismissed.

The Appellate Court culled out four points for determination in the light of arguments advanced by counsel for the parties, detailed in para 15 of the judgment. The Appellate Court rejected plea of the contesting respondent/defendant No. 3 that the land had been partitioned amongst co-owners by holding that suit property was still joint amongst the co-sharers. However, it has been held that specific killa number was sold to respondent No. 3 and actual possession was handed over to him and he raised a boundary wall over the same and as such prayer of the appellant-plaintiff restraining the defendants from taking possession of specific portion of the suit land or raising construction over it has been rendered infructuous.

Further held that raising construction by a co-owner in exclusive possession of the property does not amount to ouster of other co-sharers and further does not cause any irreparable loss and injury as construction is subject to partition of the joint property. Plea of the respondent/defendant with regard to suit being barred by principle of res judicata in view of decision in previous suit No. 872 of 1998/2000 titled “Naresh vs. Raj Kumar” was rejected. However, the appellant/plaintiff has been held guilty of concealing material facts and has not approached the court with clean hands, in view of her conduct elicited in cross examination wherein she admitted that some co-sharers had constructed their houses on different parcels of joint property and she feigned ignorance over material facts pertaining to the suit land in an effort to conceal material facts from the court.

Counsel for the appellant would urge that the Appellate Court committed a serious error rather perversity by rejecting claim of the appellant for grant of injunction against raising construction over a part of the joint land particularly land comprising killa No. 104/14/2 (4-0) (East) which is adjacent to the main road, therefore, has more value viz-a-viz other land despite rejecting plea of the contesting respondent that joint khatta has been partitioned by mutual consent of the co-sharers even though in the revenue record the land is shown to be joint. It is argued with vehemence that every co-sharer is deemed to be in possession of every inch of joint land and respondent No. 3 cannot be allowed to raise construction over land comprising killa No. 104/14/2 (4-0) on the basis of sale deed dated 20.1.1998 executed in his favour by Joginder Singh, brother-in-law of the appellant-plaintiff.

Counsel representing the contesting respondent has supported

the judgments passed by the courts by contending that the same are based upon correct appreciation of materials on record and well settled proposition in law that a litigant who approaches the court with uncleaned hands is not entitled to any relief particularly the equitable relief of injunction. It is argued with vehemence that the appellant in her cross examination has admitted that she and certain other co-sharers have already raised construction of houses in the joint land. Further argued that prior to filing of the suit by Smt. Krishna widow of Rajesh, Naresh, another brother of Rajesh filed Civil Suit No. 872 of 1998 claiming the same relief against respondent Raj Kumar restraining him from raising construction over land comprised in killa No. 104/14/2 (4-0). Naresh failed in his effort to get an injunction both before the trial court as well as Court in Appeal. Immediately thereafter, the present suit was filed in October 2003. It is argued that it may be true that since Smt. Krishna was not a party to the suit instituted by Naresh, therefore, judgment passed in the earlier litigation may not constitute *res judicata* but the present suit filed by Smt. Krishna is nothing but an abuse and misuse of process of law to keep respondent No. 3 entangled in legal battle.

I have heard counsel for the parties, perused the paper book and the records.

Respondent No. 3 purchased part of joint land vide sale deed dated 20.1.1998 executed by Joginder Singh brother of Naresh and Ramesh but the sale deed pertains to killa no. 104/14/2 (4-0) (East). The plea of the appellant that none of the co-sharers is in exclusive possession of the joint land or, in other words, land is in joint possession of the co-sharers and is used for agricultural purposes only gets falsified and belied in view of the

facts elicited in cross examination of Krishna wherein she has admitted construction of houses by her and other co-sharers in the joint land. As has been rightly noticed by the Court in Appeal that she feigned ignorance about various vital facts sought to be put to her with a clear and clever intent to avoid that construction is in existence in different parcels of joint land. The very fact that certain co-sharers have already raised construction over the joint land falsified and belied plea of the appellant that the entire land is in possession of all the co-sharers or the same is being used for agricultural purposes. As the appellant has raised construction of her house in the joint land, she cannot seek equity by asking for injunction against another co-sharer to stop him from raising construction over a part of the joint land. The Court in Appeal has rightly held that raising of construction by a co-sharer will neither amount to ouster of other co-sharer nor it will cause irreparable loss or injury to others as construction on a part of joint land would be subject to adjustment of rights of the parties at the time of partition. The very fact that some of the co-sharers have already raised construction on different parcels of joint land shows that the co-sharers are in exclusive possession of different parcels of land, may be, by way of mutual arrangement or otherwise. One thing more to be added here is that Naresh Kumar, brother of late husband of Smt. Krishan instituted a suit for injunction against Raj Kumar (respondent herein) restraining him from taking possession of any specific portion of joint land or raising construction over any specific portion of land forcibly and illegally on the plea that Joginder Singh had no right to execute sale deed dated 20.1.1998 and the same is wrong, illegal and liable to be set aside. The suit was dismissed by the trial court on 20.3.2002. The appeal preferred by Naresh Kumar came to

be dismissed by the Additional District Judge, Sonapat on 6.10.2003. Within few days of dismissal of appeal of Naresh Kumar, the present suit was filed by Smt. Krishna on 22.10.2003. There is nothing on record suggestive of the fact that Naresh Kumar and Smt. Krishna are not maintaining cordial relations. It appears that as Naresh Kumar became unsuccessful in his effort to get an injunction against Raj Kumar restraining him from raising construction on land comprising killa number 104/14/2 (4-0)(east) purchased vide sale deed dated 20.1.1998, Smt. Krishna came forward to file the instant suit seeking the same relief restraining Raj Kumar from raising construction over the aforesaid killa number. All these facts have rightly been taken note of by the Court in Appeal to hold that the appellant is guilty of concealing material facts and approached the court with uncleaned hands which disentitles her to seek relief of injunction. In this view of the matter, there is no ground to interfere in the well considered judgment passed by the Appellate Court.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

7.5.2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No