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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1458-2011 (O&M)
Date of decision : 15.02.2018

Abhey Singh

... Appellant(s)

Versus

Rampat (deceased through LRs) and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam Saini, Advocate and
Ms. Monika Arora, Advocate
for the appellant.

Mr. Ajay Jain, Advocate
for respondent Nos.2, 3, 5 to 10.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent findings of fact, whereby the suit claiming declaration to be owner in possession of land as per description given in para 1 of the plaint, with a consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession, forcible dispossession and prayer for mandatory injunction, in case the defendants, during the pendency of the suit, succeeded in taking the forceful possession of the property, has been dismissed by the Courts below.

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

The appellant-plaintiff instituted the aforementioned suit claiming joint owner in possession of land in Village Bolni, Lodhana,

District Rewari and in Kot Kasim in Rajasthan, on the basis of agreement to sell dated 17.07.1982, arrived at between the parties, whereby an agricultural land situated in Village Bolni comprised in Khewat No.42, Khatoni No.59, Rect. No.23, Killa No.11, 12, 13, 19, 20, 21/2 and 22/1 measuring 34 kanal 9 marla, was allotted to him, whereas remaining defendants were allotted the land in Village Lodhana, District Rewari and Kot Kasim in Rajasthan. As per the averments, he was put into possession of the land and had constructed a pucca house, wherein an electricity connection of tube-well was issued.

The aforementioned suit was contested by the defendants, wherein execution of the agreement to sell, aforementioned, was denied and as well as the exclusive possession, in essence, it was stated that no partition had taken place as revenue record reflected the joint khata. The trial Court dismissed the suit and the appeal taken before the lower Appellate Court also met with the same fate.

At this stage, Mr. Pritam Saini, learned counsel appearing on behalf of the appellant-plaintiff submits that since the proper remedy for his client would be to seek the partition before revenue court as per the provisions of Section 111 of the Punjab Land Revenue Act. He may be allowed to avail the aforementioned remedy and the status quo order dated 05.07.2012 granted by this Court may be maintained.

Mr. Ajay Jain, learned counsel appearing on behalf of the respondents-defendants submits that in fact the proper remedy and court as chosen, by the counsel representing the appellant, is appreciation of provisions of law, but as regards the injunction, he seriously disputed the same as the appellant-plaintiff failed to prove the exclusive possession. The

report of the Local Commissioner is neither here nor there.

I heard the learned counsel for the parties and appraised the paper book.

In view of the stand taken by the counsel for the appellant-plaintiff, I am of the view that once the appellant-plaintiff has not succeeded in proving the agreement, the alleged instrument of partition, dated 17.07.1982 (Ex.PW-1/B), he shall be at liberty to seek the partition of the property, by approaching the revenue court.

As the matter is pending before this Court since 2011, I deem it appropriate that the status quo dated 05.07.2012 granted by this Court shall operate further for a period of two months, whereby the appellant-plaintiff undertakes to move an appropriate application for partition of the property along with an application for interim stay. In case such application is filed, the Competent Authority shall consider the application for interim stay in accordance with law, much less, in a most pragmatic and reasonable manner.

With the aforesaid observations, the present appeal stands disposed of.

15.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No