

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

RSA No.2965 of 2012 (O&M)

Balbir Singh

....Appellant

Versus

Mithu Singh

....Respondent

Date of Order: 15.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Kumar Girdhar, Advocate for the appellant.

Mr. I.S Mann, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is aggrieved of the judgment and decree of reversal dated 02.4.2012 passed by learned District Judge, Sri Muktsar Sahib whereby the appeal filed by the defendant-respondent against the judgment and decree dated 09.2.2011 passed by the Civil Judge (Sr. Division), Gidderbaha decreeing the suit of the plaintiff for permanent injunction restraining the defendant-respondent from interfering in his peaceful possession in due course of law, has been accepted.

Facts in brief are that the plaintiff-appellant instituted the suit seeking injunction restraining the defendant-respondent over the suit property measuring 2 kanal comprised in Khewat No.1437 as detailed in head note of the plaint in due course of law on the premise that this plot was purchased by the plaintiff from said Dalip Singh on 06.7.1989 through registered sale deed and he kept his cotton sticks and ruri in it. Defendant allegedly claimed to have got the area demarcated and some area of his plot was found amalgamated with the plot of the plaintiff. Plaintiff never

surrendered the possession of the plot to anybody and despite repeated requests, the defendant refused to accede to the requests and thus cause of action arose for the plaintiff to file the suit.

The suit was contested by the defendant-respondent by raising objections qua maintainability of the suit, for the remedy available with the plaintiff-appellant was to complete the area of land from other share holders namely Suhava Singh son of Dalip Singh.

From the pleadings of the parties, the trial Court framed as many as four issues including the issue of relief.

In support of their case, plaintiff-appellant examined six witnesses besides bringing on record documentary evidence.

On the other hand, the defendant-respondent examined three witnesses and tendered certain documents on record.

On the basis of preponderance of evidence, the trial Court while granting the injunction decreed the suit and the appeal filed by the defendant-respondent has been accepted by the lower Appellate Court by observing that the property at the hands of the plaintiff was joint, for, partition had not taken place.

Learned counsel for the appellant submitted that the lower Appellate Court has misread the evidence and other relevant documentary evidence on record while dismissing the suit of the plaintiff, for, said Dalip Singh was owner in possession of 7 kanals of land, and mutation of 1 kanal of land was sanctioned in favour of Pritam Singh son of Dalip Singh vide mutation No.1575 and mutation No.1599 was sanctioned qua land measuring 1 kanal in favour of plaintiff out of Khasra No.571 (7-0) and mutation No.1600 was sanctioned regarding 3 kanals of land out of Khasra

No.571/1/2 from Dalip Singh in favour of defendant. He submitted that there is gross illegality and perversity in the judgment of lower Appellate Court as the plaintiff-appellant had been able to prove exclusive possession of some portion of the property and as such the suit was fully maintainable. No cogent ground has been given by the lower Appellate Court by setting aside a well reasoned judgment of the trial court.

Per contra, learned counsel for the respondent-defendant submitted that no error could be found with the judgment of the lower Appellate Court. Concededly, the property of both the parties was in joint ownership and the plaintiff-appellant failed to prove exclusive possession of the land. Mere keeping of ruri and cotton in the land by the plaintiff would not amount to exclusive possession once the plaintiff himself had stated that he had not raised any construction, therefore, the present appeal is liable to be dismissed.

After hearing learned counsel for the parties and perusing the paper book with their able assistance,, I find no merit and force in the submissions of learned counsel for the appellant.

It is well settled that a co-sharer can seek injunction against a co-owner in case being in exclusive possession, however, as per the evidence noticed by the lower Appellate Court being the last court of law and facts, plaintiff-appellant candidly admitted that he had not raised any construction and the land was vacant. Mere keeping of such material like ruri and cotton by the plaintiff would not tantamount to exclusive possession. The appellate Court, in my view, has correctly set aside the judgment of the trial Court as the remedy available with the plaintiff was to seek separate possession by way of partition. Site plan had been approved

by the Girdawar showing the property to be vacant. Thus the findings of the lower Appellate Court cannot be said to be suffering from illegality warranting any interference by this Court.

No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by the Appellate Court.

Dismissed.

May 15, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No