

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

RSA No.572 of 2012

Date of Decision.07.03.2018

Gurbachan Singh and others

.....Appellants

Vs

Gurcharan Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Pandher, Advocate
for the appellants.

Mr. Harish Goyal, Advocate
for respondent No.1.

Ms. G.K. Dulat, Advocate
for respondent No.6.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal qua non-decretal of the suit in toto whereby in suit for injunction in respect of land measuring 35 kanals 2 marla, which had been though decreed by the trial Court but the lower Appellate Court modified it to 28 kanals 17 marlas.

The appellants-plaintiffs instituted the suit for permanent injunction on the premise that they were owners in possession of land measuring 35 kanals 2 marlas which they had purchased vide sale deeds dated 25.6.1985, 12.5.1988, 22.10.1991 and 25.10.2001. The defendant No.2 to 5 sold the land more than their share out of the suit land as per the details given in the plaint to defendant No.6. On the basis of the aforementioned sale deeds, defendant No.6 attempted to interfere into the suit land by taking forcible possession, resulting into cause of action to institute the suit, particularly, the fact that status of the parties was of co-sharers as property had not been partitioned.

Defendant No.2 and 3 were proceeded ex parte as they did not turn up despite service. Defendant Nos.1, 4 and 5 filed their separate written statements and challenged the maintainability of the suit, much less, locus standi and raised various other preliminary objections. On merits, it was stated that disputed land contained two separate khatas and denied the ownership and possession of the plaintiffs over the suit land measuring 35 kanals 2 marlas. It was averred that defendant No.1 had purchased the land from defendant No.3 and 5 qua his share vide sale deed but plaintiff No.1 to 3 had illegally encroached upon 12 marlas of land due to that reason defendant No.1 did not pay the amount of ₹26,000/- to defendant No.5 out of the total sale amount. Defendant-Major Singh was owner of land measuring 4 kanals 16 marlas out of land measuring 66 kanals 6 marlas. Out of that land, Major Singh sold only 2 kanals and land measuring 2 kanals 15.5 marlas remained pending whereas the land of Piara Singh was measuring 1 kanal 4.5 marlas. All other contents of the plaint were denied with prayer of dismissal of the suit.

Defendant No.6 filed separate written statement and denied that the plaintiffs had ownership over the suit property. It was stated that land in dispute consisted of two khewats measuring 17 kanals 5 marlas whereas Surjit Singh son of Gulzara Singh was owner in possession to the extent of 69/345 share. Defendant No.6 became owner in possession to the extent of aforementioned share of the land measuring 17 kanals 5 marlas and mutation bearing No.23304 in that regard had also been sanctioned in his favour.

Since the parties were at variance, the trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the plaintiffs have 467/1326 share in the suit property and are in possession over the same? OPP*
- 2. Whether plaintiffs are entitled to permanent injunction as prayed for?*
- 3. Whether plaintiffs have no locus-standi and cause of action to file the suit? OPD*
- 4. Whether suit is bad for non joinder and mis joinder of necessary parties? OPD*
- 5. Whether suit is not maintainable in the present form? OPD*
- 6. Relief.”*

In order to support their case, the plaintiffs examined as many as 8 witnesses and tendered into evidence documents Ex.P1 to P99 i.e. the revenue records containing jamabandies to establish possession whereas defendants examined as many as four witnesses and closed evidence after tendering mutation Ex.D3.

On the basis of preponderance of evidence, the trial Court decreed the suit and granted injunction in favour of the plaintiffs by restraining the defendants from interfering into possession of the plaintiffs in the suit land measuring 35 kanals 2 marlas and also restrained order from alienating the land purchased by the plaintiffs vide sale deeds referred to above. The aforementioned judgment and decree was assailed by defendant No.1 in Civil Appeal bearing No.70 of 2011 and similarly by Randhir Singh, defendant No.6 vide Civil Appeal bearing No.72 of 2011. Both the appeals have been allowed in part where injunction had been confined to 28 kanals 17 marlas.

Mr. R.S. Pandher, learned counsel appearing on behalf of the

appellants-plaintiffs submitted that judgment and decree of the trial Court has erroneously been set aside by ignoring the documents brought on record to establish not only the ownership but possession, though the sale deed only reflected share of the vendor. The lower Appellate Court has abdicated, much less, committed illegality and perversity in reducing area to 28 kanals 17 marlas, therefore, there is a perceptible threat at the hands of the defendants qua 6 kanals 5 marlas of land and till the proceedings of partition are not initiated, the possession of the appellants-plaintiffs be protected in law being in exclusive possession. In support of his contention, he relied upon ratio decidendi culled out in Full Bench judgment of this Court in *Bhartu Vs. Ram Sarup 1981 PLJ 204* and Division Bench judgment in *Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70*, thus, urges this Court for setting aside the judgment and decree rendered by the lower Appellate Court.

Per contra, Mr. Harish Goyal for Ms. G.K. Dulat, learned counsel appearing for the respondent No.1 & 6 respectively submitted that the suit was not maintainable as the remedy was to file the suit for partition.

The plaintiffs had not become the exclusive owners of the property as they purchased the share to the extent of 35 kanals 2 marlas and it is yet to be determined which piece of land would fall to the share of the co-sharers.

The lower Appellate Court being last Court of fact and law after appreciating the evidence and examining the revenue record found the appellants-plaintiffs to be in possession of 28 kanals 17 marlas, thus, urges this Court for upholding the judgment and decree passed by the lower Appellate Court.

I have heard learned counsel for the parties, appraised the paper

book and records of the Courts below with the able assistance of learned counsel for the parties and of the view that there is no force and merit in the submissions of Mr. Pandher. The lower Appellate Court being last court of fact and law rendered the finding based upon the re-examination of documentary evidence finding the appellants-plaintiffs in possession of 28 kanals 17 marlas. Vis-à-vis other property, I am of the view that appropriate remedy for both the parties, whoever is in necessity of separate possession is to claim partition in competent court of law but not for injunction. There is no dispute to the ratio decidendi culled out in the judgments cited supra by the counsel for the appellants-plaintiffs that co-owner can seek injunction but the plaintiffs have been found in exclusive possession of 28 kanals 17 marlas of land, therefore, the remedy is as indicated above.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination before this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No