

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

RSA No.680 of 2012 (O&M)

Santokh Singh and Others

....Appellants

Versus

Avtar Singh

....Respondent

Date of Order: 14.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Arora, Advocate for the appellants.

Mr. Vaibhav Sehgal, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Appellants-plaintiffs have challenged the judgment and decree of reversal dated 17.10.2011 passed by learned District Judge, Ludhiana whereby the appeal filed by the defendant-respondent against the judgment and decree dated 04.6.2010 passed by Addl. Civil Judge (Sr. Division), Ludhiana decreeing the suit of the plaintiffs, has been accepted.

Plaintiffs-appellants filed a suit a suit for permanent injunction restraining the defendants from interfering into their peaceful possession over the plot measuring 600 sq. yds comprised of Khewat no.254, Khatauni no.257, khasra No.17//14/2, 15/1 as per jamabandi for the year 1989-90 situated at Village Bhora Tehsil and District Ludhiana, on the premise that vide sale deed dated 12.2.1994 (Ex.P.3), they purchased the property and had been paying house tax over the same. It was pleaded that they were owners in possession of the same but the defendants with malafide intention tried to grab the possession of the property in question forcibly and illegally.

Suit was contested by the defendants on the premise that no

date and month of the said sale deed allegedly executed in favour of the plaintiffs was mentioned in the plaint. It was disputed that the property was purchased by M/s Kartar Colonisers Pvt Ltd in the year 1974 and the defendant-Avtar Singh was the Managing Director of the said Company and that the defendants had developed the land at the spot in the shape of plots and they were in exclusive possession of the same. Plaintiffs were neither owners of the disputed plot nor were they in possession of the same.

The trial Court on the basis of pleadings of parties framed the following issues:

- “1. Whether the plaintiffs are owners in possession of the plot in question?OPP*
- 2. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP*
- 3. Relief.”*

During the pendency of the suit, defendant No.2-Amarjit Singh had died and his name was omitted from the array of parties.

Appellants-plaintiffs in support of their evidence examined PW1-Saudagar Singh and PW2-Gurnam Singh besides tendering copies of sale deed as Ex.P2 & Ex.P3 and copy of GPA as Ex.P1, copy of jamabandi as Ex.P4 and the site plan as Ex.P7.

On the other hand, defendants examined as many as five witnesses and brought on record documents Ex.D1 to D5.

The trial Court on the basis of evidence on record decreed the suit while holding the plaintiffs to be in exclusive possession over the property by relying upon the judgment reported as **Rame Gowde Vs. Varadappa Naidu 2004(1) RCR (Civil) 519 (SC) Nagamma Vs. G. Kamalamma 2008(2), CCC 434 (Andhra Pradesh) Bhagwan Singh Vs.**

Madan Lal 1997 (1), CCC 597 (P&H) and Lara Singh Vs. Maghar Singh 2005(3) CCC 59 (P&H). The appeal filed against the same by the defendants has been accepted by lower Appellate Court on the premise that since the property in question was in joint ownership, therefore, the remedy was to seek partition.

Learned counsel for the appellants-plaintiffs submitted that the lower Appellate Court has not appreciated the evidence on record while setting aside a well reasoned judgment of the trial Court. The trial Court on the basis of documentary evidence and the material placed on record has rightly found that the plaintiffs-appellants were in exclusive possession over the property in the light of judgments reported as **Bhartu Vs. Ram Sarup, 1981 PLJ 204 and Bachan Singh Vs. Swaran Singh, 2000(3) RCR (Civil) 70.** Therefore, the findings of the lower Appellate Court are not sustainable being illegal and the injunction granted by the trial Court should have been ordered to be maintained. The Lower Appellate Court has not even examined the documentary evidence brought on record and thus violated the provisions of Order 41 Rule 31 CPC as well as Section 96 CPC.

Per contra, learned counsel for the respondent-defendant submitted that the jamabandi produced by the defendants on record shows their ownership. Even the jamabandi of the appellants-plaintiffs was also showing their share but no exclusive possession was proved as the assessment register was only in respect of the plot and not qua the built up area. Moreover, the Assessment register was not brought on record through any witness of the Municipal Committee, therefore mere exhibition of the document will not entitle the plaintiffs to seek ownership. He submitted that the lower Appellate Court has rightly set aside the judgment of the trial

Court.

After hearing learned counsel for the parties and appraising the paper book, I find no force in the contentions of learned counsel for the appellants-plaintiffs. A perusal of the jamabandi brought on record shows the respective shares stated to have been purchased by the appellants-plaintiffs. For the purpose of seeking injunction against a co-sharer, any party including the plaintiffs were required to prove possession but the trial Court has misread the evidence and other documents on record while relying upon the assessment register, which was only in respect of the plot and not qua the built up area. Jamabandi (Ex.P1) further showed joint ownership of the property and even jamabandis (Ex.P.4 and P.5) were also to that effect. In my view, the trial Court has abdicated in not appreciating the documentary evidence in correct perspective as the plaintiffs failed to prove their possession.

Consequently, the findings of the lower Appellate Court are affirmed and the plaintiffs are relegated to avail the remedy of partition.

No ground is made out for interference.

Dismissed.

March 14, 2018
manoj

^(AMIT RAWAL)
JUDGE

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