

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1687 of 2016 (O&M)

Date of Decision: February 14th, 2018

Rakesh Kumar & others

...Appellants

Versus

Baljit Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Puneet Jindal, Senior Advocate with
Mr.Parambir Singh, Advocate,
for the appellants.

Mr.Harsh Bunker, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the civil suit instituted at his instance of the respondent-plaintiff seeking injunction against the appellant-defendants from interfering or taking forcible possession of land measuring 2 Marlas, comprised in Khewat/Khatauni No.180/1712/2130, Khasra No.526/0-2, situated in Village Dhaliwal Bet, Tehsil and District Kapurthala, had been decreed by both the Courts below.

Mr.Puneet Jindal, learned Senior Counsel assisted by Mr.Parambir Singh, representing the appellant-defendants submitted that the respondent-plaintiff instituted a suit on the ground that her husband Sukhdev Singh, Joginder Singh and Mohinder Singh (since deceased) were co-owners in respect of land measuring 6 marlas comprised in Khewat Nos.526, 515 and 516. The appellant-defendants had purchased the plot situated towards the southern side of the respondent-plaintiff's plot vide sale

deed dated 18.7.2011 and owing to the threat, the respondent-plaintiff sought the injunction, whereas the stand of the appellant-defendants before the Court was that Joginder Singh though had sold 1/3rd share, but put them into possession, i.e., vendees of a specific portion of 2 marlas in Khasra No.526. In essence, their vendor, husband of the respondent-plaintiff, was in exclusive possession and remedy for the respondent-plaintiff was to seek the partition of the property and not the injunction.

It was also contended that the Courts below have erroneously relied upon the cross-examination of DW-2 Joginder Singh as on the next date when he appeared for the cross-examination he tilted towards the plaintiff that she was in possession of the suit property. A bare reading of sale deed dated 18.7.2011 (Ex.D1) shows that the land along with path was delivered to the appellant-defendants by Joginder Singh, their vendor. The appellant-defendants stepped into the shoes of Joginder Singh. There was a specific pleading that in Ex.D2, wherein appellant-defendants had been shown as co-owners/co-sharers in the property in dispute and, therefore, no injunction could be granted against co-owners. Copy of jamabandi Ex.P1 showed that mutation No.7328 dated 26.7.2011 had already been sanctioned in favour of the appellant-defendants. In this regard, Mr.Jindal relied upon the ratio decidendi culled out in **Karam Singh & anr.Versus Lakhbir Kaur & Ors., 2011(2) PLR 698** to submit that injunction cannot be granted sought either of the co-sharers, if one of the co-sharers has been found to be in exclusive possession. On similar line is judgment in **Gurdial Singh Versus Harmaljit Singh, 2007(3) Law Herald 2223**. All these factors, if read in cumulative by the Courts below, the suit would have definitely resulted into dismissal.

Per contra, Mr.Harsh Bunker, learned counsel appearing on behalf of the respondent-plaintiff submits that the appellant-defendants have not led any evidence that prior to the sale deed, Joginder Singh was in exclusive possession of the suit property. If the aforementioned documentary evidence had been placed on record, perhaps the case of the respondent-plaintiff would not have been maintainable. Even jamabandi reflected all the co-owners to be in possession of the property measuring 6 marlas and, therefore, Joginder Singh had no right to put into possession the appellant-defendants in Khasra No.526 regarding 2 marlas land. He also drew the attention of this Court to the statement of Joginder Singh, extracted in the grounds of appeal, wherein he though admitted that he was not in possession of the land and the vendees had also gone to take possession, but not taken and, therefore, injunction had been granted against them. In support of his contention, cited the judgments rendered in **T.Lakshamipathi and others Versus P.Nithyananda Reddy and others, 2003 (3) R.C.R. (Civil) 305 (Para 24), Jagmohan Singh Versus Balbir Singh and another, 2017 (2) PLR 51** to contend that purchaser of a joint property is not entitled to possession if he has purchased a share and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Jindal, for, the best possible evidence, i.e., the khasra girdawari prior to sale deed dated 18.7.2011 (Ex.D1) has been withheld by the Courts below, wherein Joginder Singh was allegedly in exclusive possession of land measuring 2 marlas in khasra No.526 as the entire land measuring 6 marlas consists of three khasra numbers, i.e., 515, 516 and 526.

It is settled law that every co-sharer/co-owner is owner of every inch of land and cannot be dispossessed unless the same is partitioned by metes and bounds.

Since the appellant-vendors had stepped into the shoes of Joginder Singh, they could not have taken the forcible possession as it is yet to be decided which portion of the land would fall to which co-owner/co-sharer. If at all, the appellant-defendants were aggrieved that they were put into possession of 2 marlas of land, which has not been established on record, the remedy is to seek the partition of the land and they cannot interfere under the garb of the contents of the sale deed.

There is no dispute to the ratio decidendi culled out in the judgments relied upon by Mr.Jindal, but both the judgments pertained to cases where persons have been found to be in exclusive possession. In the absence of any material produced on record by the appellant-defendants with regard to the exclusive possession of Joginder Singh, they are not entitled to any relief.

On the contrary, the judgments cited by Mr.Bunger are based on general principles that the joint possession cannot be disturbed unless the property is partitioned by metes and bounds. The remedy, thus, for the appellant-defendants is to seek partition of the property.

For the reasons stated above, no ground for interference in the concurrent findings of fact cannot be made out. Even no substantial question of law arises for determination by this Court.

Appeals stands dismissed.

February 14th, 2018

ramesh

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No