

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

**RSA No. 401 of 2013(O&M)
Date of decision : 22.02.2018**

Amrik Singh

..... Appellant

versus

Veer Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Saurabh Bajaj, Advocate for the appellant.

Mr.Naveen Chopra, Advocate for respondents No.2 & 3.

AMIT RAWAL, J. (Oral)

CM No. 1123-C-2013

This is an application for condonation of delay of 18 days in filing the present appeal.

For the reasons mentioned in the application, the delay of 18 days in filing the appeal is condoned.

CM stands disposed of.

RSA No. 401 of 2013

This appeal is directed against the judgment and decree of both the Courts below whereby suit of the appellant-plaintiff seeking permanent injunction by way of restraint order against the defendants from dispossessing him from the land measuring 7 kanals 19 marlas in khasra No. 836, Khewat No. 69/76, Khatauni No. 132 as well as from interfering in his peaceful possession forcibly except in due course of law, was dismissed.

The plaintiff instituted suit on the ground that he is owner and in exclusive possession of the land as co-sharer from the last 35-40 years and an entry to this effect existed in his name in the column of possession in jamabandi for the year 2004-2005. It was also submitted by the plaintiff that there was a compromise dated 13.08.2006 effected between the parties before the Panchayat as defendant No.1 who was none else but the brother of the plaintiff. The same had been brought on record as Ex.D1.

The defendants contested the suit on the ground of maintainability and on the premise that both the parties, as per the revenue record, are/were co-owners and no co-owner can seek injunction against the other co-owner in the absence of exclusive possession. The trial Court, on the basis of the aforementioned pleadings, dismissed the suit. The Lower Appellate Court also upheld the findings of the trial Court and dismissed the appeal preferred before him. This is the reason the appellant-plaintiff has come up before this Court.

Mr.Saurabh Bajaj, learned counsel appearing for the appellant-plaintiff submitted that both the Courts below have erred in appreciating the evidence and there is a gross illegality and perversity in the findings arrived at by them. The statement of DW1-Veer Singh admitting the possession of Amrik Singh on 3 kanals of the excess land has not been adverted to though vide miscellaneous application he had also placed on record Khasra Girdawari for the year 2005-2006 to show that Amrik Singh had been in possession of the land and impugned findings further relegating the parties to avail the remedy of partition in such circumstances without granting injunction, is not sustainable. In support of his contention he has relied upon a judgment of this Court in **Bachan Singh v. Swaran Singh 2003(3)**

RCR(Civil) 70.

Per contra, Mr.Naveen Chopra, learned counsel appearing on behalf of the respondents submitted that the suit has rightly been dismissed in view of the law aforementioned as the plaintiff has miserably failed to prove his possession. One line here or there in the cross examination cannot be read in isolation and the entire evidence has to be read in conjunction and, therefore, the concurrent finding of fact was uncalled for. Both the Courts below have categorically held that the plaintiff was not in possession of the land in dispute and dismissed his suit and appeal as well.

There is no dispute with the ratio decidendi culled out by this Court in the case of Bachan Singh(supra) where it has been categorically held that a co-owner who is not in exclusive possession of the property cannot seek injunction against the other co-owner until and unless he is able to seek possession where the remedy is to seek partition. Both the Courts below while referring to the statement of DW1 Veer Singh- admitted that plaintiff was in excess possession of 3 kanals of the land of khasra No. 836 which itself was a clincher to show that he was in exclusive possession, therefore, this exercise ought to have been undertaken by the Lower Appellate Court which, up to paragraph 17, only referred to the statement of the witnesses but in para 18 gave the finding without any rationale or basis/reasoning. The Lower Appellate Court being the last Court of fact was under obligation to deal with every evidence muchless advert to the provisions of Order 41 Rule 31 CPC. The aforementioned exercise has not been undertaken by the Lower Appellate Court. Therefore, I feel that it is a fit case where the judgment and decree of the trial Court is liable to be revisited in the first appeal. The same is set aside and the matter is

remanded back to the learned Additional District Judge to decide the appeal afresh. Parties through their counsel are directed to appear there on 20.03.2018.

Appeal stands disposed of.

22.02.2018
sunita

(AMIT RAWAL)
JUDGE

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