

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

**RSA No.1783 of 2016 (O&M)  
Date of Decision.14.11.2018**

Om Parkash

Vs

.....Appellant

M/s Sheetal International Pvt. Ltd.

...Respondent

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Balram Parashar, Advocate for  
Mr. J.S. Ghuman, Advocate  
for the appellant.

Mr. Sanjay Vij, Advocate  
for the caveator-respondent.

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**AMIT RAWAL J. (ORAL)**

**C.M. No.15783-C of 2018**

Application for impleading the legal representative of  
appellant-Om Parkash under Section 151 CPC is not maintainable and  
the same is hereby dismissed as not maintainable.

**RSA No.1783 of 2016**

The appellant-defendant is in appeal against the judgment  
and decree dated 27.11.2015 rendered by the lower Appellate Court  
whereby the suit preferred by the plaintiff for injunction dismissed by  
the trial Court, has been allowed.

The respondent-plaintiff claimed to be the full-fledged and  
lawful owner in possession of the land bearing Rect. No.14, Killa  
No.27/2(8-0) situated in the revenue estate of village Samaspur, Tehsil  
and District Gurgaon on the premise that the land bearing Rect. No.14,  
Killa No.27(0-16) was partitioned amongst the owners and mutation  
No.364 was sanctioned on the basis of the partition. Killa No.27 was

bifurcated as Killa No.27/1 (0-8) and 27/2 (0-8). Before the plaintiff could come into picture, the land bearing Rect. No.14, Killa No.27/1 (0-8) came to the share of the defendant and Rect. No.14, Killa No.27/2 (0-8) came to the share of Balbir Singh and Rati Ram. Balbir Singh and Rati ram sold their half share by handing over actual possession to M/s Jade Exports Pvt. Ltd vide sale deed dated 28.09.1993 for valuable consideration. The aforementioned company was amalgamated with the respondent-plaintiff on account of approval of scheme of amalgamation by the High Court of Delhi vide order dated 23.02.2005. As per the judgment of the Delhi High Court, M/s Jade Exports Pvt. Ltd. had already been granted licence bearing No.60 of 1994 for developing a duly licensed colony, the aforementioned licence was also transferred in favour of the plaintiff and as per the lay out plan, Killa No.27/2 was meant to be kept as a park. It was alleged that defendant was already in possession of Killa No.27/1 by raising construction thereupon but when the plaintiff wanted to raise construction, interference of forcible dispossession was caused, resulting into filing of the suit.

The defendant contested the suit and the factum of the partition and mutation was not denied but the site plan attached to the plaint was stated to be incorrect, much less, location of Killa Nos.27/1 and 27/2. In fact, it was stated that in the alleged site plan that Killa No.27/2 shown in red colour with letter ABCD was on the right side and Killa No.27/1 in blue colour on the left side whereas it was otherwise. In fact, Killa No.27/1 was owned and possessed by defendant. The factum of Balbir and Rati Ram having become owner of Killa No.27/2 was also denied and that of the plaintiff.

On the basis of pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant and his agents from taking forcible possession of the suit property, described in the prayer clause, on the grounds mentioned in the plaint, as prayed for? OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit against the answering defendants? OPD*
- 3. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts? OPD.*
- 4. Whether the plaintiff has no cause of action to file the present suit against the answering defendant? OPD*
- 5. Relief.”*

In support of averments, plaintiff examined as many as 7 witnesses and brought on record Ex.P1 to Ex.P20 and Ex.PW2/A to Ex.PW7/A.

On the other hands, defendant examined five witnesses and brought on record Ex.D1 to D11 and Mark C to Mark DX i.e. copy of mutation, application moved by Om Parkash to Teshildar, demarcation report and special power of attorney.

The trial Court on the preponderance of the evidence though held that the plaintiff was owner of the property but declined injunction by relying upon “*parat patwar*”. In appeal, the lower Appellate Court gave credence to the “*parat sarkar*” and noticing the fact that the property had been partitioned, granted injunction.

Mr. Balram Parashar for Mr. Jagmohan Ghuman, learned

counsel appearing for the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable as there was a discrepancy in the “*parat sarkar*”. Identity of the property was in dispute de hors of the fact that partition of the property had been reflected. In such circumstance, the respondent-plaintiff could not obtain injunction. The Senior Manager, who was present at the spot at the time of inspection conducted by the local commissioner has not stepped into the witness box. The local commissioner found that the appellant was in possession of the area for which injunction was sought. No person can be permitted to take law in his hands to encroach upon the area belonging to the third party. The location of the property was identified by PW7.

The caveator-respondent/plaintiff is represented by Mr. Sanjay Vij. It is pointed out that the defendant did not step into the witness box to support the averments made in the written statement but only his son appeared, therefore, the plaintiff has been prevented to put certain relevant and important questions. Mutation No.364 was the clincher to establish respective positions. Solitary entry in parat patwar would not have been basis for declining injunction. This is what is the import of the judgment and decree of the lower Appellate Court, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Parashar, for, concededly partition proceedings were effected long time back and the Mutation No.364 to that effect had already been sanctioned. For all intents and purposes, Killa No.27 measuring 16 marlas and its bifurcation into Killa No.27/1 and 27/2 for

8 marlas each is not in dispute. Defendant has been able to prove construction on Killa No.27/1. No contrary evidence in this regard has been placed. Report of the local commissioner is based upon the parat patwar and parat sarkar. It was objected to but the objections remained undecided. Even request for appointment of second local commissioner was not acceded to. The defendant has not been able to justify the possession of Killa No.27/1, which was not owned by him. The demarcation report does not reveal the aforementioned fact. A person who is not owner cannot be permitted to encroach and implore to seek partition instead of injunction. The status of the parties, thus, would not be of co-sharer. The authorities granted licence, after verifying the *aks sajra* and other relevant documents. If at all, there was a dispute with regard to identity of the property, the defendant would not have raised the construction or would have got the demarcation conducted before doing the same.

All these factors weighed in the mind of the lower Appellate Court being last court of fact and law in granting injunction, which, in my view, does not suffer from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, second appeal is dismissed.

(AMIT RAWAL)  
JUDGE

November 14, 2018

Pankaj\*

Whether Reasoned/Speaking      Yes

Whether Reportable      No