

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

RSA No. 3213 of 2016(O&M)

Date of decision: 24.9.2018

Ram Tirath @ Laddi and othersAppellants

VERSUS

Kailash ChanderRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Malkeet Singh, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 23.11.2015 passed by the Additional District Judge, Jalandhar whereby appeal preferred by the respondent/plaintiff against the judgment and decree dated 07.02.2014 passed by the Additional Civil Judge (Senior Division), Phillaur (hereinafter to be referred as the trial Court) was allowed; suit filed by the respondent/plaintiff for grant of permanent injunction was allowed restraining the defendants/appellants from changing nature of suit property, khu/well, rasta by raising any type of construction and from cutting the trees standing therein without getting the property partitioned.

Counsel for the appellants would argue that the trial Court rightly dismissed suit of the respondent/plaintiff but the Court in appeal has committed an error by setting aside the judgment and decree and partly allowing claim of the respondent/plaintiff to restrain the

defendants/appellants from changing nature of the suit property and cutting the trees standing therein. It is argued that as the respondent/plaintiff has raised construction of two shops in the property jointly owned by parties to the suit, he has disentitled himself to get any relief in equity to restrain the appellants from raising any construction over the suit property.

I have heard counsel for the appellants, perused the paper-book particularly judgments passed by the Courts below.

The trial Court in para 8 of the judgment has held that the suit property is in exclusive possession of the plaintiff and defendants as it is vacant plot and parties are co-sharers in the suit property, there is no imminent threat proved on the file that defendants are going to change nature of the suit property by raising construction. The defendants have alleged that plaintiff has already constructed two shops in the suit property which included khasra No.223. So he cannot seek the relief of injunction as he concealed material facts from the Court. Further held that no injunction can be issued against the co-sharer and suit of the plaintiff is barred under Section 41 of the Specific Relief Act, 1963 by relying upon judgments of this Court **Kishan Singh Vs. Sucha Singh, 2008(2) RCR (Civil) 394** and **Ram Chander Vs. Gobind Ram and others, 2010 (2) RCR (Civil) 87.**

The Court in appeal has taken note of the previous judgment passed in Civil Suit No.11 of 1989 in respect of khasra No.223 (0-9) which was filed by Sh. Niwas, father of the respondent/plaintiff against Darshan Ram, predecessor in interest of defendants No.1 to 5 in the suit. In the previous litigation, Darshan Ram was directed to remove construction

raised by him in the suit property and restrained from cutting trees from the suit property.

The Appellate Court in para 25 has held that defendants have failed to prove that plaintiff has constructed shop in the suit property. Counsel for the appellants has failed to point out any materials on record to substantiate plea of the appellants that the respondent/plaintiff has raised construction in the joint property which disentitle him to seek equitable relief of injunction or the respondent is guilty of concealing material facts from the Court.

There are consistent findings recorded by the Courts that parties to the suit are joint owners of the vacant plot comprising khasra No.223 (0-9) and they are in possession of the suit property. As the appellants have failed to prove that they are in exclusive possession of joint property owned by the parties, no error much less perversity can be found in the judgment passed by the Court in appeal restraining the appellants from raising construction over joint land or cutting the trees as all the co-owners in joint possession are deemed to be in possession of every inch of joint land. In this view of the matter, I do not find an error much less illegality in the judgment passed by the Court in appeal, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

SEPTEMBER 24, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no