

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

RSA No. 1966 of 2015(O&M)

Date of decision: 17.12.2018

Gainda and others

.....Appellants

VERSUS

Chhotu Ram and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Agnihotri, Advocate for the appellants.

Mr. Rakesh Dhiman, Advocate for respondent No.1.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings of fact recorded by the Courts whereby Chhotu Ram – respondent No.1 was declared to be co-owner in joint possession of 1/6th share in suit land detailed in head-note of the plaint situated in the revenue estate of village Tauru, District Nuh, (now Tehsil Tauru District Mewat) and appellants/defendants are restrained from dispossessing the respondent/plaintiff from suit land and also from creating any charge over share of the plaintiff.

Notice of motion was issued to the limited extent and a relevant extract from order dated 08.01.2016 reads as follows:-

“Learned counsel for the appellants argues that the suit land is in possession of the appellants. There was no documentary or other evidence to show that the plaintiff was in possession on

any portion of the suit land. A vague decree was allowed by the Courts below restraining the appellants-defendants from dispossessing the plaintiff from his share.”

Counsel for the appellants/defendants would argue that as respondent No.1 has neither claimed himself to be in exclusive possession of suit land or a part thereof nor he has been recorded to be in exclusive possession of land in which the respondent/plaintiff has been declared as co-owner to the extent of 1/6th share, judgments and decrees passed by the Courts restraining the appellants from dispossessing the respondent/plaintiff from suit land are liable to be set aside. He would fairly concede that the appellants have no grievance to express with regard to the respondent being declared co-owner in joint possession to the extent of 1/6th share in suit land and restraining the appellants from creating charge over share of the respondent/plaintiff.

Counsel representing respondent No.1/plaintiff, on the contrary, has supported consistent findings recorded by the Courts restraining the appellants from dispossessing the respondent/plaintiff from suit land or at least to the extent of his share to the tune of 1/6th share.

I have heard counsel for the parties, perused the paper-book and records particularly the judgments impugned.

Perusal of the records would reveal that the respondent/plaintiff has claimed 1/6th share in suit land on the basis of natural succession to his father Sh. Chuna Ram and Smt. Asharfi wife of Sh. Chuna and has challenged mutations/fard badar etc. No such plea was raised by the respondent/plaintiff that he is in exclusive possession of suit land or a part thereof which entitles him to seek injunction against his

dispossession from the suit land. The respondent only sought consequential relief of injunction restraining the defendants from dispossessing him from his share in suit land and also from alienating, mortgaging, leasing and transferring the suit land. Counsel for respondent No.1 has failed to point out any evidence on record to support findings of the Courts that the respondent is in exclusive possession of any part of joint land on the basis whereof he is entitle to injunction against his co-owners against his dispossession from suit land or land to the extent of his share. In this view of the matter, it can safely be concluded that findings of the Courts restraining the appellants from dispossessing the respondent/plaintiff from suit land suffer from perversity and liable to be set aside to that extent.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The judgments and decrees passed by the Courts restraining the appellants from dispossessing the respondent/plaintiff from suit land are set aside to that extent. As a consequence, suit filed by the respondent/plaintiff seeking permanent injunction restraining the defendants/appellants from dispossessing him from his share or the entire suit land is dismissed, leaving the parties to bear their own costs.

DECEMBER 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no