

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

RSA No.4036 of 2016 (O&M)

Date of decision:15.11.2018

Avtar Singh

... Appellant

Vs.

Sukhwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Amit Jain, Advocate
for the appellant.**

AMIT RAWAL J.

Appellant-defendant No.1 is aggrieved of the concurrent findings of facts and law arrived at by the trial Court and affirmed by the Lower Appellate Court in a suit preferred by the respondent-plaintiffs seeking declaration and permanent injunction conferring the status of co-sharers in joint possession and without seeking partition, restrained the parties to alienate, mortgage and raise construction.

The plaintiffs stated to have purchased the property from the previous co-owner but alleged that mutation in lieu thereof had not been sanctioned as the sale deeds (Ex.P1 to Ex.P4) carried a presumption of truth. Due to some entries in the revenue record, defendants intended to alienate and change the nature of the land, despite repeated request, did not stop, gave a cause of action to institute the aforementioned suit.

Appellant-defendant no.1 opposed the suit regarding maintainability, locus-standi, mis-joinder and non-joinder of necessary parties. The defendant being owner was in possession of the suit property purchased by him and had right to use the same in any manner. Other defendants also raised the similar objections.

The plaintiffs examined as many as four witnesses and brought on record Ex.P1 to Ex.P14, i.e., revenue record and sale deeds. On the other hand, defendants examined seven witnesses and closed the evidence. On the preponderance of the evidence, i.e., statement of deed writer of the sale deed, the trial Court accorded the status as indicated above.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-defendant No.1 submitted that judgments and decrees of the Courts below are not sustainable as the plaintiffs miserably failed to establish the exclusive possession as according to their own pleaded case, for, mutation in pursuance to the sale deeds, had not been sanctioned. In such circumstances, injunction as indicated in the decree ought not to have been granted.

In support of the aforementioned submission, relied upon ratio decidendi culled by the Division Bench of this Court in **Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70**. Para 15 of the same reads thus:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-

owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession. (ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

An application for additional evidence filed before the Lower Appellate Court was also erroneously dismissed.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, there is no impediment on either of the parties to seek partition. Not only the plaintiffs, who after passing of the judgment and decree had to seek the partition but the defendants can too. For the sake of brevity, operative part of the decree reads thus:-

“It is ordered that the suit of the plaintiff is decreed with the relief of declaration to the effect that the plaintiff no.1 to 3 are

co-sharers in joint possession to the extent of 1/4th share and the plaintiffs no.4 and 5 are co-sharers in joint possession to the extent of 1/9th share of the land measuring khasra no.6/26, measuring 2 kanals 8 marlas khata no.56 khatauni no.98/4, as mentioned in the jamabandi for the year 2001-02, situated in the area of village Khasa, Tehsil and Distt. Amritsar alongwith consequential relief of permanent injunction restraining the defendant no.1 from raising any type of construction over the said land, without getting its partition AND also restraining the defendants from alienating the said land by way of sale, mortgage, gift, lease etc. in any manner or more than their share to anybody else till the same is partitioned. Parties are left to bear their own costs.”

The aforementioned decree, in my view, is most innocuous, fair and equitable. In such circumstances, if one of the parties/co-sharer is granted liberty to raise construction, it would create multifariousness, much less, create impediments and hindrances at the time of drawing of final decree, for, if the permission of construction is granted, a plea of retaining the possession would definitely be taken. There is no dispute to the ratio decidendi culled by the Division Bench of this Court in Bachan Singh's case (supra) as fact of each and every case has to be seen.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no

substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No