

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

**RSA No.4501 of 2016
Date of Decision.14.05.2018**

Sarwan Kumar and anotherAppellants

Vs

Ishwar Chand and othersRespondents

2. RSA No.4502 of 2016

Sarwan Kumar and anotherAppellants

Vs

Ishwar Chand and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam Singh Saini, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two regular second appeals arising out of civil suit bearing No.1900 of 2013 filed on 13.11.2010 seeking declaration and permanent injunction that the plaintiffs are in possession to the extent of 33 marlas and also houses constructed by them by challenging the revenue entries in the name of defendants in column No.5 of the jamabandi.

The appellants-plaintiffs instituted the suit on the premise that the plaintiffs are the exclusive owners in possession of the land aforementioned of specific ghair marked ABDE about 24 marlas and houses constructed in 9 marlas along with front portion shown in the site plan being co-sharer which is part and parcel of Khewat No.56, Khatoni No.84, Rect. No.14, Khasra No.2/2 (4-0) of village Kasithal,

Tehsil Thanesar, District Kurukshetra. The brother of plaintiffs namely Balwant Singh was also owner in possession of 2 marlas separately i.e. Khasra No.14//2/2. The plaintiffs had constructed the boundary wall upto 7/8 feet and affixed an iron gate in the eastern side on the main road and locked the same in their possession and bricks near about 22000 and other domestic articles of the plaintiffs were also lying in the said boundary wall. The constructed house is 20 years old and electric connection was also issued. The land bearing khasra No.2/2 was not used for agricultural purposes. The entries in the name of defendants alone of the said khasra No.2/2 in the column of possession are illegal, null and void. The defendants were bent upon to dispossess the plaintiffs from suit property, therefore, the cause of action arose to file the suit.

The aforementioned suit was contested by defendant No.1 to 3 and 5 by raising objection with regard to maintainability, locus standi.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellants-plaintiffs submitted that both the Courts have concurrently held that the parties to the suit are in exclusive possession of their houses and remedy is to seek separate possession by partition proceedings which are pending but the dispute which arose for adjudication was with regard to 22000 bricks which were actually lying in khasra No.2/2 as to whether there was any joint ownership or otherwise. The defendants tried to remove the bricks lying in the aforementioned khasra number but could not succeed due to timely interference of the plaintiffs with the help of respectables and in that regard, a kalandra against both the parties under Section 107/150/151

Cr.P.C was lodged. The Courts below could not have rejected the claim with regard to bricks, though injunction had been granted in favour of the plaintiffs to the extent that the plaintiffs are in possession to the extent of 33 marlas as cosharers and defendants were directed not to dispossess plaintiffs from the suit property and also from causing interference in 9 marlas subject to partition but did not grant any injunction or declaration with regard to 22000 bricks.

I have heard learned counsel for the appellants-plaintiffs and appraised the paper book. The facts as noticed above leads to irresistible conclusion that it was case of settlement of ego and nothing else. Once the parties have been found in exclusive possession as cosharers, claiming separate possession by way of partition as noticed by the Courts below is the correct appreciation of fact and law. Since there was no proof of ownership of the bricks, the lower Appellate Court did not grant any injunction as the plaintiffs failed to discharge the onus under Section 101 of the Indian Evidence Act.

In view of the aforementioned, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No