

237

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5241-2016 (O&M)
Date of decision : 22.03.2018

Ashok Kumar

... Appellant(s)

Versus

Jagdish Mitter

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Sodhi, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for permanent injunction restraining the defendant from interfering into possession over the portion shown in the site plan forcibly and illegally, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The appellant-plaintiff instituted a suit on the ground that he had been in exclusive possession of the suit property on the basis of the ownership to the extent of half share by virtue of sale deed dated 27.03.1981. The defendant and Paras Ram were residing at Chandigarh, whereas Mool Raj at Tundla, District Ferozabad (Uttar Pradesh). The defendant submitted an application to the police and got the compromise effected, in which, the defendant had agreed to pay a sum of Rs.3,50,000/- to the plaintiff for the share of the plaintiff in the suit property on or before 31.03.2001, vide compromise dated 06.01.2001, but he refused to abide by

the terms and conditions of the compromise as he wanted to forcibly dispossess, necessitating the plaintiff to file the suit.

The aforementioned suit was contested by the defendant on the premise that the plaintiff had illegally and forcibly entered into two rooms of the disputed suit property for the last few days, for which, an application had been submitted to the police and in this regard, an FIR bearing 38 dated 03.04.2008 under Sections 353, 406 and 427 of the Indian Penal Code at Police Station Civil Lines, Batala, had been registered. It was also stated that on the basis of power of attorney, the defendant had sold the share of the plaintiff out of the disputed property in favour of Shashi Mitter vide sale deed dated 07.11.1997, therefore, the plaintiff was never in possession of the suit property.

The trial Court on the basis of the pleadings framed the following issues:-

1. *Whether the plaintiff is entitled to permanent injunction as prayed for?*
2. *Whether plaintiff has no cause of action to file the suit? OPD*
3. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the plaintiff has not come to the court with clean hands? OPD*
6. *Relief.*

Both the parties examined their respective witnesses.

The plaintiff placed on record Ex.P-3 to P-5 i.e. the bills of electricity and telephone connection to establish the exclusive possession for the purpose of obtaining the injunction against the co-sharer, but the

trial Court declined to grant injunction, for, it found that both the parties to the *lis* were co-sharers and therefore, no injunction against the co-sharer in the absence of the exclusive possession of the suit property, can be granted. The appeal preferred before the lower Appellate Court also met with the same fate.

Learned counsel for the appellant-plaintiff submits that both the Courts below committed illegality and abdication in not referring to the admission of the defendant, who candidly admitted that after retirement, he never stayed in the house as he had a voter-card of Chandigarh. It was a clincher to prove the exclusive possession and in view of such situation, the injunction can always be granted subject to any terms and conditions, which the Court would have imposed enabling the party to avail the remedy of injunction, therefore, there is abdication, much less, illegality and perversity.

I have heard the learned counsel for the appellant and appraised the paper-book and of the view that there is no merit and force in the submissions of Mr. Sodhi.

A specific query was put to Mr. Sodhi, with regard to the possession, for which, he submitted that his client is still in possession of the suit property. There is a categoric admission on behalf of the appellant-plaintiff that he had half share in the aforesaid property and in the absence of any partition, injunction against the co-sharer cannot be granted, until and unless one of the co-sharers is able to establish the exclusive possession. Other co-sharer has possession in each and every inch of land, even if, he is not in exclusive possession. The fact of the matter is that the entire purpose of the appellant-plaintiff should have been in seeking

partition instead of filing a suit. The aforementioned view of mine is supported by the Full Bench judgment rendered by this Court in “Bhartu V/s Ram Sarup” 1981 PLJ 204 and reiterated by the Hon'ble Division Bench of this Court in “Bachan Singh V/s Swaran Singh” 2000 (3) RCR (Civil) 70. In my view, both the Courts below correctly declined the injunction on the premise that exclusive possession had not been proved.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees of the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

22.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No