

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5314 of 2016 (O&M)
Date of decision:20.08.2018.

Bhajan Kaur

...Appellant

Versus

Buta Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Sharma, Advocate for the appellant.

LISA GILL, J.

Appellant/plaintiff is aggrieved of judgments and decrees dated 28.01.2015 passed by Civil Judge (Junior Division), Barnala and 18.11.2015 passed by District Judge, Barnala.

The appellant/plaintiff filed a suit for permanent injunction restraining the defendants from encroaching upon the land of the plaintiff or raising boundary wall or construction over the land in question or selling the specific khasra number without partition of the suit property. It was pleaded that the plaintiff and defendants were joint owners of the property measuring 9 Kanal 1 Marla and the plaintiff was in exclusive possession of the property in question measuring 1 Kanal 7 Marlas. It is further pleaded that the area in question is within the residential zone and is costlier than the agriculture land. The defendants/respondents, it was stated, were trying to encroach upon the suit property, which was in possession of the plaintiff, attempting to dig the boundaries of the suit property and raise boundary wall and construction thereon. It was pleaded that the defendants were trying to sell specific khasra

numbers out of the suit property without seeking partition of the land in question.

Suit was resisted by the defendants. In the written statement, averments on merits, were denied that the plaintiff/appellant was in possession of the suit property. It was stated by the defendants that they had purchased the suit property on 15.01.2013 from Dhanna Singh, Gurcharan Singh and Narinder Kaur, who were in exclusive possession of the suit property. It was further stated that they had already constructed boundary wall in the suit property and were raising construction on the land in question.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

- “1. Whether the plaintiffs and defendants are joint owners of the property in dispute? OPP
2. Whether the plaintiff is in exclusive possession over the suit property in dispute? OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction against as prayed for? OPP
4. Whether the suit of plaintiff is not maintainable in the present form? OPD
5. Whether the defendants are in exclusive possession of the property in dispute? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
7. Relief.”

Learned trial Court while holding that none of the parties was able to prove their exclusive possession over any part of the suit property, dismissed the suit filed by the plaintiff. Appeal filed by the present plaintiff was also dismissed by the learned District Judge, Barnala, vide order dated 18.11.2015.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that once it is evident from the record that defendants/respondents were trying to change the nature of the suit property, suit filed by the plaintiff should have been decreed and injunction granted in her favour. He placed reliance upon the judgments passed by this Court in **Jagmohan Singh Vs. Balbir Singh and another 2017 (2) PLR 51** and **Bachan Singh Vs. Swaran Singh 2000 (3) RCR (Civil) 70**.

I have heard learned counsel for the appellant and have gone through the file as well as a copy of the pleadings before the learned trial Court, which was furnished in court today.

It is not in dispute that both the plaintiff as well as defendants purchased shares in the suit property from their respective vendors who were also co-sharers. The appellant/plaintiff purchased her share from Maru Singh and Balwinder Singh vide sale deed dated 22.01.2013. The defendants purchased their share from Dhanna Singh, Gurcharan Singh and Narinder Kaur vide sale deed dated 15.01.2013. It is not in dispute that the vendors of both the parties were joint owners of the property in question. Their shares were not defined. Revenue record (Ex.P2 to Ex.P4) reveals that the suit property is in possession of a number of co-sharers and none of them is reflected to be in exclusive possession of any part of the suit property. Learned both the Courts below have, thus, rightly held that the plaintiff/appellant is not entitled to injunction as prayed for against co-sharers. Arguments advanced by learned counsel for the appellant is that the defendants are trying to change the nature of the suit property. However, a perusal of the copy of the plaint furnished in Court today reveals that it is the

case of the plaintiff herself that the property in question was a costly residential property. Therefore, it does not lie with the plaintiff/appellant to urge that the defendants are trying to change the agricultural nature of the property in question.

No other argument has been raised.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 28.01.2015 and 18.11.2015 passed by the learned Civil Judge (Junior Division) and learned District Judge, Barnala, respectively, which warrant any interference by this Court.

There is a delay of 82 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing this appeal has been rendered academic.

Present appeal being devoid of any merits is dismissed with no order as to costs.

(LISA GILL)
JUDGE

August 20, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No