

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

RSA No.1301 of 2014

Date of Order: 06.03.2018

Nain Singh

....Appellant

Versus

Sunder Lal

....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Aman Bansal, Advocate for the appellant.

Mr. V.K. Jain, Sr. Advocate with
Mr. J.L. Malhotra, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

The plaintiff-appellant is in second appeal against the concurrent judgment and decrees passed by both the learned courts below whereby his suit has been dismissed vide order dated 23.8.2011 passed by Civil Judge (Jr. Division), Sonapat and the findings affirmed in appeal vide judgment dated 31.10.2013 passed by the learned Addl. District Judge, Sonapat.

Plaintiff instituted a suit for declaration with consequential relief of permanent injunction on the premise that he purchased the land measuring 3 Kanal 16 Marla situated within the revenue estate of village Bakipur as per sale deed dated 17.8.1982. Defendant wanted to dispossess the plaintiff and therefore cause of action arose for the plaintiff to file the said suit. It is stated that plaintiff, in fact, was in actual physical cultivating possession as owner in the land comprised in Khewat No.193/186 khata no.218, Rect & Killa no.11/11/2/2 measuring 3 kanal 16 Marla out of land

measuring 17 kanal 13 marla. It was stated that owing to the illiteracy of the plaintiff, the entries in the column of cultivation and possession in the revenue record remained continued as joint of the co-sharers.

Aforesaid suit was contested by the defendant, who by filing written statement took preliminary objections with regard to the suit being bad for the purposes of court fee and jurisdiction etc. However, on merits, it was alleged that the suit was not maintainable and that the suit land was under joint ownership of all the co-sharers. It was stated that the plaintiff became co-sharer in the suit land along with the sister of the defendant whereas defendant had filed the Civil suit no.220 of 1995 against his sisters seeking the relief of declaration to the effect that he is owner in possession of 4/5th share of the agricultural land comprised in land measuring 22 kanal 4 marla and was having 381/476 share in the agricultural land comprised in Khewat no.178/174 including the land in dispute. Said suit was decreed in favour of the defendant vide judgment dated 3.8.1995. Defendant became owner of the afore-mentioned land to the extent of 4/5th share whereas the plaintiff became owner of 1/5th share and therefore the plaintiff could not claim declaration.

On the basis of pleadings of the parties, trial Court framed the following issues:

- “1. Whether the plaintiff is in actual physical possession as co-owner in the suit land (as mentioned in para no.1 of the plaint)?OPP*
- 2. Whether the plaintiff is entitled for the relief of declaration to change the revenue entries in his name in the column of cultivation as co-owner, as prayed for?OPP*
- 3. If issue no.1 is proved, then, whether the*

plaintiff is entitled for the relief of permanent injunction”, as prayed for?OPP

4. *Relief.”*

Plaintiff examined PW1 Dharampal, PW2 as Hari Kishan besides himself as PW3 and brought on record certain documents whereas defendant besides appearing as DW1 examined Suraj Bhan as DW2 and Kishan as DW3.

On the basis of preponderance of evidence, the trial Court dismissed the suit and the appeal was also met with the similar fate by lower Appellate Court.

Learned counsel for the appellant-plaintiff submitted that the plaintiff is in exclusive cultivating possession as co-owner over the suit land and in this regard he has brought on record khasra girdawari to show his exclusive possession. He submitted that at least the courts below ought to have granted the permanent injunction as the suit for injunction against the co-sharer on the basis of exclusive possession is maintainable. An application for correction of khasra girdawari was moved however, the courts below have not taken into consideration these facts, therefore the judgments and decrees passed by both the courts below suffer from illegality and perversity as cross examination of DW1 has totally been ignored wherein he admitted possession of the appellant-plaintiff. Ex.P.10, a copy of order dated 30.6.2010 passed by A.C Ist Grade, Sonapat also clinched the case of exclusive cultivating possession of the plaintiff.

Per contra, learned Senior counsel appearing for the respondent submitted that once the status of the plaintiff was of a co-sharer, the only remedy available was to seek partition of the property but no relief of declaration and injunction could have been claimed. It is contended that

both the courts below have rightly dismissed the suit of the plaintiff.

After hearing learned counsel for the parties and appraising the paper book, in my view, it is conceded position that as per sale deed dated 17.8.1982, the appellant had purchased share from the defendant and no other evidence has come on record to belie the said fact. The application filed during the pendency of the suit regarding change of khasra number is meaningless as the remedy available with the plaintiff, in my view, was to seek partition by way of separate possession as his share was 1-5th viz-a-viz defendant. Since the exclusive possession has not been proved, therefore the courts below have rightly declined to grant the injunction.

No other relevant material has been produced before this Court to form different opinion with regard to injunction as noticed by the both the courts below.

Present appeal is bereft of any merit and the same is dismissed.

March 06, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No