

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

RSA No.4645 of 2015 (O&M)
Date of Decision: July 16, 2018

Man Singh and ors.	Versus	---Appellants
Dalee and others		---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Johan Kumar, Advocate
for the appellants.

Mr. Yash Dev Kaushi, Advocate
for the caveators-respondents.

HARINDER SINGH SIDHU, J.

The plaintiffs have filed this regular second appeal against the judgments of the Courts below.

The plaintiffs had instituted a suit seeking declaration to the effect that they are absolute owners and in actual physical possession of the land bearing khewat No. 141/152, khatauni no. 187, killa/khasra no. 33/26 (0-14), total measuring 14 marlas. Relief of permanent injunction was also sought to restrain the defendants from dispossessing and interfering in the peaceful possession of the plaintiffs over the suit property.

The plaintiffs and defendants were recorded as joint owners in possession as per their respective shares in the agricultural land measuring 43 kanals 4 marlas situated within the revenue estate of village Chandawali, Tehsil Ballabgarh, District Faridabad as per jamabandi for the year 2001-02. Out of this land measuring 43 kanals 4 marlas, 36 kanals 16 marlas land was acquired by the Government. Later 14 marlas of land out of 16 kanals 11 marlas was released.

The case of the defendants was that they are absolute owners of $\frac{1}{2}$ share of the released land i.e. 7 marlas as per their respective shares. It was further their case that if the plaintiffs wish to take their half share of the land, the defendants would have no objection.

Learned trial Court on the basis of evidence and documents produced on record concluded that as per the revenue record the plaintiffs and defendants were co-owners of the suit property alongwith other released land. The plaintiffs were nowhere shown to be exclusive owners over the same. The jamabandis further revealed that the suit land had not been partitioned till date. It was thus held that the plaintiffs could not be declared as exclusive owners over the suit property as the property in question was still joint between the co-sharers and had not been partitioned till date. Accordingly, the relief of declaration was declined.

In order to substantiate claim for the relief of permanent injunction, the plaintiffs relied on the report Ex.P1 of the revenue officer. The report revealed that the suit property was residential and the houses have been constructed over the land measuring 0 K 14 M comprised in Rectangle No. 133 killa no. 26. The plaintiff-Man Singh had constructed his house and boundary wall over the suit land measuring 0 K 7 M, Dharam Singh, Shyam, Dharambir, Maya Devi and plaintiff Nos. 2 to 5 had constructed their houses and shops over the area measuring 0K 7 M and they were in possession at the spot. Learned trial Court thereby noted that the prima-facie the possession of the plaintiffs over the suit land measuring 0K 14 M comprised in Rectangle no. 33, kill No. 26 has been established. This fact has also been admitted by DW2 Jassi Ram. The Court thereby concluded that the report Ex.P1 demonstrated the exclusive possession of

the plaintiffs over the suit property measuring 0 K 14 M. Holding that if a co-sharer is in exclusive possession over the joint property under same arrangement, possession cannot be disturbed and the only remedy available to the co-sharers is to seek partition, the defendants were restrained from interfering and dispossessing the plaintiffs from the suit land except in due course of law. Thus, the suit of the plaintiffs was partly decreed. The prayer for declaration was declined. However, the defendants were restrained from interfering and dispossessing the plaintiffs from the suit land except in due course of law.

Learned counsel for the appellants as also learned counsel for the caveators-respondents state that the partition proceedings have been instituted and are pending.

The learned lower appellate court affirmed the findings of the learned Trial Court.

Learned counsel for the appellants has not been able to establish as to how the findings of fact recorded by the Courts below are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

July 16, 2018
dinesh

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned
Whether Reportable

Yes
Yes / No