

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA No.6653 of 2016 (O&M)

Date of decision: 31.07.2018

Som Nath (deceased) through his legal heirs

..... Appellants

Versus

Anchal Dass and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- None.

ANIL KSHETARPAL, J. (ORAL)

Called twice, however, no one has come forward to argue the appeal. Hence, this Court is left with no choice but to read and decide the case.

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiffs filed a suit claiming decree of vacant possession of house No.28-D depicted in red colour in the site plan attached. The prayer for grant of mense profit as also injunction was made. Umri Devi, the mother was owner in possession of land measuring 817.29 square feet which was bequeathed by registered testament dated 06.08.1996 in favour of plaintiff to the extent of 2/3 share and defendant to the extent of 1/3th share. In the written statement, the execution of the testament was disputed. Learned trial Court as well as learned First Appellate Court have found that there is a registered testament executed by Umri Devi whereby 2/3rd has been bequeathed in favour of the plaintiff and 1/3rd in favour of the

defendant. Thus, the Courts have granted decree that the plaintiffs and the defendants that they are co-owners of the property. The Courts have held that decree for possession of specific portion cannot be granted because both the parties are co-owners. This Court has examined the grounds of appeal. The following substantial questions of law have been proposed:-

“(a) Whether the judgment and decree passed by the Ld. Courts below is an outcome of misreading of Order XIV Rule 2 and Order XX Rule 5 of the Code of Civil Procedure, 1908?

(b) Whether a co-sharer in exclusive possession of the joint property can file a suit for injunction to prevent an act which is detrimental to the interest of the other co-owners?

(c) Whether the finding of the Ld. Courts below on face of it is perverse and outcome of misreading of evidence on record and thus perverse?

(d) Whether the judgment and decree passed by the Ld. Courts below being based on misreading of the settled law is not sustainable in law?”

Order 14 Rule 2 is dealing with framing of issues whereas Order 20 Rule 5 provides that the Court has to give its decision on all issues. On examination of judgment passed by the learned trial Court, it is apparent that the Court framed the following issues:-

“1. Whether the plaintiffs are entitled for vacant possession as prayed for?OPP

2. Whether the plaintiffs are entitled for Means Profits/Damages accruing to the plaintiff on account of forcibly dispossession as prayed for?OPP

3. Whether the plaintiffs are entitled for Permanent Injunction as prayed for?OPP

4. Whether the suit of the plaintiff is not maintainable in the present form?OPD

5. Relief.”

On framing of issues, the Court decided the case on all the

issues. Before the learned First Appellate Court, whatever arguments were raised, those have been dealt with by the Court. Hence, question of law as proposed does not arise.

With regard to second question, it will be noted that once the parties are co-sharers, then the remedy is to seek partition of the property which is joint. Every co-owner/co-sharer by fiction of law is deemed to be in possession of every part of the joint property.

With regard to questions No.3 and 4, in the grounds of appeal, it has not been pointed out as to how the judgments passed by the Courts below are perverse or outcome of misreading of evidence.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

31.07.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No