

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

**RSA No.877 of 2016 (O&M)
Date of Decision.15.11.2018**

Kewal Krishan

...Appellant

Vs

Ashok Kumar

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rai Singh Chauhan, Advocate
for the appellant.

Mr. Karan Nanda, Advocate
for the caveator-respondent.

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AMIT RAWAL J. (ORAL)

The appellant-defendant has not been successful in defending the suit claiming two reliefs but the Courts below confined for delivery of vacant possession for land measuring 1 marla.

The case set out in the plaint was that the plaintiff had been owner in possession of suit land with some other co-sharer. For the purpose of four-laning of National Highway No.1A, out of 5 marlas of land, 2 marlas comprised of Khasra No.129/1/1 was acquired and the plaintiff raised construction of shop in the portion of his share measuring approximately 1 marla 6 sarsahi. Six sarsahi was also acquired by the National Highway Authroity and in lieu thereof, a compensation of ₹55,000/- as per Ex.P9 was received. The defendant, on western side, had house adjoining to the suit land. The defendant without having right, title or interest upon the suit land, by taking undue advantage of acquisition of land by the National Highway, in the month of January, 2009 encroached upon the suit land and raised construction of shop and boundary wall.

The appellant-defendant opposed the suit on the premise that on acquisition of land, no right and title vested and the suit was an attempt to grab property of the defendant. The defendant along with his brothers Puran Chand and Ashok Kumar had purchased the plot measuring 3 marlas comprising of a constructed room along with specific boundaries from Sh. Nirmal Singh vide registered sale deed dated 31.05.1978.

The plaintiff in support of aforementioned pleadings, examined PW1 Bidhi Singh, PW2 Amar Singh, PW3 Parshotam Singh Kalsi, Draftsman, Civil Court Complex, Dasuya, himself as PW4, PW5 Rani Badhan, Senior Clerk from the office of SDM, Mukerian and PW6 Amarjit Singh and tendered into evidence Ex.P1 to Ex.P8 i.e. site plan, jamabandi for the year 2005-2006, khasra girdawari for the year 2006-08, Aks Sijra, legal notice, postal receipt, compensation register and assessment register of market value.

On the other hand, defendant examined as many as three witnesses and brought on record Exs.DW1/A, DW1/B, DW1/C, DW2/1, DW2/2, DW3/1 and DW3/2.

On the preponderance of evidence, the trial Court, as noticed above, decreed the suit. The appeal laid before the lower Appellate Court has also been dismissed.

Mr. Chauhan, learned counsel appearing on behalf of the appellant-defendant submitted that once the suit simplicitor for injunction or mandatory injunction was not maintainable, direction for handing over vacant possession was not correct, as status of the plaintiff was of a co-sharer. In support of aforementioned

submission, relied upon the Full Bench judgment of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204**. The defendant on account of acquisition had also received compensation. Identity of the property was also in dispute. Demarcation report was not conducted as per the High Court Rules and Regulations and therefore, could not have been looked into.

I am afraid aforementioned arguments of Mr. Chauhan are not sustainable, as no effort has been made to belie the contents of demarcation report as per provisions of sub-rule 2 of Rule 10 of Order 26 CPC, which reads as under:-

“(2) Report and depositions to be evidence in suit.

Commissioner may be examined in person - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

Receipt of compensation, much less, ownership as co-owner has not been proved. The defendant admittedly is not co-owner with the plaintiff and therefore, the ratio decidendi culled out by Full Bench of this Court in **Bhartu's case** (supra) cannot come to the rescue of appellant-defendant. It is settled law that one of the co-owner, in the absence of another co-owner, can espouse the

grievance.

All these factors weighed in the mind of the Courts below in rendering the concurrent finding of fact, which, in my view, does not suffer from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No