

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1625 of 2017

Date of Decision: December 04, 2018

Paramjit Kaur alias Pammi & another

...Appellants

Versus

Lakhbir Kaur (since deceased) through L.Rs

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the restraint order restraining them from interfering in the peaceful possession of the plaintiff in built kothi, vacant land and irrigated land bearing Khasra Nos.9//2 (8-0), 9//3/1/1 (5-6) as per jamabandi for the year 2010-11.

Plaintiff alleged that she was owner and exclusive possession of kothi, vacant land and irrigated land. She had purchased 10 marlas of land from S.Manjit Singh, Harjit Singh, Balbir Singh and Baljinder Singh sons of Kirpal Singh vide registered sale deed dated 27.08.2009 and another piece of land measuring 1 kanal through some person vide sale deed of even date. After purchase, plaintiff raised the construction of the house and rest of the land was being irrigated. Sohan Singh son of Kishan Singh was owner in possession of the property and after his death, plaintiff was put in possession as owner being daughter-in-law. The defendants, being influential persons, extended the threat to the plaintiff and, therefore, cause

of action accrued to file the suit.

Defendants opposed the suit by denying the ownership of the plaintiff and as well as contents of the sale deed, *ibid*. It was alleged that the vendors of the plaintiff were not in possession of the suit property and, therefore, the possession could not have been vested with the plaintiff and the sale deed was null, void and illegal as the vendors of the plaintiff never came into possession of the suit land under challenge, for, Manjit Singh, as per the contents of the sale deed dated 09.06.2006, had transferred Khasra No. 9/3/1 min north (2-0) and not Khasra No.9/2 min south (16 marlas) and 9/3 min south (14 marlas) and, therefore, question of being in possession as per the sale deed, did not arise. In fact, the total land was 28 kanals 3 marlas owned by Sohan Singh, who had sold the same to the defendants vide registered sale deed dated 25.07.2007 and delivered possession of Khasra No.6/22/23, 24/1/, 24/2, 9/4/1, 9/4/2, 3/1/1, 3/2, 3/1/2 to them. After the execution of the sale deed, the defendants came into possession and thereafter raised the construction. Plaintiff propounded collusive sale deeds. A counter claim was also filed seeking possession of the land reflected in the sale deeds.

Plaintiff, in support of the aforementioned pleadings, examined seven witnesses and brought on record Ex.P1 to Ex.P3, Ex.PW5/1 to Ex.PW5/7, PW6/1 to Ex.PW6/5, Ex.PW7/1 and Ex.PW7/2, i.e., sale deed, site plan, electricity bills, certificates etc. On the other hand, defendants examined three witnesses and brought on record sale deeds of 2006 and 2007 and application submitted to the police.

Mr. Kewal Krishan Advocate for Mr. Premjit Kalia, learned counsel appearing on behalf of the appellant-defendants submitted that both

the courts below have committed illegality and perversity in granting injunction as the plaintiff miserably failed to prove the exclusive possession even if the finding is that no injunction can be granted against the co-sharer. In fact, the sale deeds were result of fraud and misrepresentation as Manjit Singh, vendor of the plaintiff, did not have any title. Even the identity and description of the property was in dispute. In such circumstances, blanket injunction could not have been granted. It is also matter of fact that in the injunction suit, title is not proved.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, it was found that parties to the lis were co-sharers and the plaintiffs were put in exclusive possession of the land, subject matter of the sale deed. The remedy for either of the parties, in such circumstances, was to seek partition and not possession. The shares are yet to be determined, which can be done only by the competent court by passing preliminary decree.

For the reasons stated above, no ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

December 04, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No