

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 1702 of 2017(O&M)

Date of Decision: September 20 , 2018.

Daya Nand and others APPELLANT (s)

Versus

Chiranji Lal and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. J.P.Sharma, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

CM No.4083-C of 2017

There is a delay of ten days in refiling of the appeal.

For the reasons mentioned in the application as well as the arguments address, delay of ten days in refiling of the appeal is condoned.

Application is accordingly disposed of.

RSA No.1702 of 2017

The plaintiffs-appellants are aggrieved of judgment and decree dated 26.03.2013 passed by the learned Civil Judge(Junior Division), Narnaul as

well as judgment and decree dated 29.09.2016 passed by the learned Additional District Judge, Narnaul whereby the suit filed by them has been dismissed.

Brief facts necessary for adjudication of the case are that, the plaintiffs-appellants filed a suit for permanent injunction for restraining the defendants from interfering in the use and occupation of land measuring 29 Kanals 15 Marlas situated in village Shahbajpur as detailed in the plaint and from raising any construction thereon or changing the nature of the property. It was further prayed that the defendants be restrained from cutting the trees and interfering in the possession of the plaintiffs-appellants. As per the jamabandi for the year 2005-2006, the suit-land was pleaded to be in joint possession of the plaintiffs and defendants. It was stated that the land was that the land was not partitioned by metes and bounds. It was further pleaded that the contesting defendant/respondent No.1 – Chiranji Lal was a notorious person and he wanted to take illegal possession of the land in dispute from the plaintiffs-appellants as well as from the proforma respondent. Defendant/respondent No.1 – Chiranjit Lal, it was stated, had started collecting building material on the land and in case he succeed in his illegal pursuits, irreparable loss would be caused to the plaintiffs. Hence, the suit.

Defendant/respondent No.1 contested the suit. Written statement was filed by him raising various preliminary objections. While controverting the averments on merits, it was averred that the father of the plaintiffs/appellants and defendants were co-owners in possession having equal shares. It was further stated that they are co-owners in exclusive possession of their shares for the last 30 years. It was stated that after partition defendant No.1 constructed his house

on his share of the land and planted tree(s), a chhapar (pond) etc. Main gate of the contesting defendant's house was stated to be open towards the northern side. Chhapar (pond) was carved out by the contesting defendant on the southern side with some open land for tethering cattles and marriage purpose. A temple of Balaji was there on the north side of the house having a well with electricity connection. Appellants/plaintiffs and proforma defendant refused to pay the electricity bill. It was pleaded that defendant No.1 was paying the bill on his own. House in question was constructed by him with the consent of all co-sharers 30 years ago after the partition. It was denied that the plaintiffs had constructed the house jointly. The house in question was constructed by defendant No.1 out of his funds. The plaintiffs were stated to be residing in the house situated in the village which had not yet been partitioned. Dismissal of the suit was prayed for. Replication was filed by the plaintiffs/appellants.

On the basis of pleading of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
2. Whether the plaintiff has no cause of action or locus-standi to file the present suit? OPD
3. Whether the suit of the plaintiff is not within limitation?OPD
4. Relief

The learned trial court while observing that the plaintiffs themselves had constructed their residential houses on the parcel of land in their respective shares, concluded that the remedy available to the plaintiffs is to seek partition. Consequently, suit filed by the plaintiffs was dismissed.

Appeal preferred by the appellants/plaintiffs was also dismissed by

the learned Additional District Judge, Narnaul vide judgment and decree dated 29.09.2016. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellants/plaintiffs. It is contended that even a co-sharer is entitled to injunction in case the nature of property is sought to be changed by the other co-sharer. It is thus prayed that this appeal be allowed and impugned judgments and decrees be set aside. Consequently, the suit filed by the plaintiffs/appellants be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file.

It is not in dispute that the plaintiffs/appellants, contesting respondent No.1-Chiranji Lal as well as respondents No.2 and 3 (now represented by their legal heirs) are co-owners of the property in question in equal shares. The plaintiffs/appellants sought an injunction against the defendants particularly, defendant/respondent No.1-Chiranji Lal for restraining him from raising any construction on the specific portion of the land abutting the well. It was contended that the said defendant is trying to change the nature of the property. It is apparent from the evidence on record that both the parties are in exclusive possession of separate parcels of land. Electricity bill of the tubewell in the name of respondent No.1-Chiranji Lal reveals that he is in exclusive possession of a particular parcel of land, though the disputed property has not been partitioned by metes and bounds. It is not disputed by the appellant/plaintiffs that residential house has been constructed by the plaintiffs

on the parcel of land in their possession. In the factual matrix of the case, it is rightly held by the learned trial court that the appellants/plaintiffs have failed to establish that the act of defendant/respondent No.1 amounts to ouster. Merely raising of construction or improvement in the common property does not amount to ouster. In this respect reliance has been rightly placed by both the learned courts below on the judgment of this Court in Bachan Singh v. Swaran Singh, 2000(2) PLJ 143. It is rightly held by both the learned courts below that the efficacious remedy available to the plaintiff/appellants in this situation was to seek partition. I am of the considered opinion that there is no question of law much less a substantial question of law which arises for adjudication in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 26.03.2013 and 29.09.2016 passed by the learned Civil Judge (Junior Division), Narnaul and the learned Additional District Judge, Narnaul, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

September 20, 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No