

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

**RSA-2027-2017 (O&M)
Date of Decision:11.07.2018**

Raj Masih

... Appellant

Versus

Taj Masih

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. L.S. Mann Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff-Raj Masih filed a suit for permanent injunction restraining the defendant-Taj Masih from changing the nature of the suit land and as described in the head note of the plaint by raising any kind of construction or alienating by way of sale etc., any specific part or portion thereof. Plaintiff's suit was decreed by the trial Court vide judgment and decree dated 07.09.2015. Civil appeal preferred by the defendant/appellant has been accepted vide impugned judgment dated 14.02.2017 passed by learned Additional District Judge, Gurdaspur and consequently, suit of the plaintiff has been dismissed.

2. Resultantly, the plaintiff/appellant is in second appeal before this Court.

3. Counsel for the appellant has been heard at length.

4. The uncontroverted factual position is that the parties herein are the co-sharers/co-owners in possession along with other co-sharers

over the suit property.

5. Civil appeal preferred by the defendant-Raj Masih has been accepted and the suit of the plaintiff seeking injunction was dismissed in terms of the following reasoning adopted by the lower Appellate Court:

“As per the settled law no injunction can be granted against any co-sharer in the joint land because it is presumed that every co-sharer is in possession upon every inch of the property till its partition. Furthermore, any alienation made by a co-sharer is always subject to partition and if any change is occurred in the nature of property i.e. also subject to partition. In this case, if any construction will be made by defendant-appellant that will be made upon his own risk because in the partition proceedings any portion of the property can fall in the share of any co-sharer. Furthermore, plaintiff-respondent is at liberty to file application for partition, but as per the settled law, no injunction can be granted in the joint land against co-sharer.”

6. Counsel does not dispute that as per jamabandi Ex.P1 and Khasra Girdawri Ex.P2, the property in the hands of the appellant and respondent is still joint and there was no evidence adduced on record reflecting a family settlement/partition between the co-sharers. Partition or family settlement is admittedly not reflected in any revenue record.

7. In the considered view of this Court, since the property between the parties herein, who happen to be real brothers is still joint and neither of them is in exclusive possession over any parcel of the suit property, the reasoning adopted by the lower Appellate Court while dismissing the suit of the plaintiff/appellant cannot be stated to be flawed.

8. No interference in the matter is warranted. The appeal does

not raise any question of law.

- 9. No merit.
- 10. Appeal is dismissed.

11.07.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No