

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

RSA-2123-2017 (O&M)

Date of Decision: 20.11.2018

Gurcharan Singh and others

... Appellants

Vs.

Sudagar Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. K.R. Dhawan, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellants-defendants have not been successful in defending the suit for injunction whereby they have been restrained in raising construction over the land measuring (7 Kanals-8 Marlas) Khasra No.34M/21 (7-8).

Plaintiffs asserted as co-sharers with the other co-owners including Hakam Singh. He, vide sale deed, sold his share in favour of the defendants but sale was only confined to share and accorded co-ownership.

Defendants opposed the suit and alleged that Hakam Singh had delivered the possession of specific khasra number of the land in dispute. It was further pleaded that defendants were in exclusive possession of the land in dispute as such they could deal with the property in any manner.

On preponderance of evidence, trial Court noticing that parties to the suit land are co-sharers granted injunction. Appellant-defendant was not successful before the lower appellate court.

Learned counsel for the appellants-defendants submitted that during the pendency of the appeal before the lower appellate court, the partition proceedings initiated by one of the co-owner culminated into

partition of the suit property though the appeal is pending as such the finding of the court below is against roznamcha Annexure A-1 issued on 9.2.2017 sought to be placed on record by way of additional evidence, if taken into consideration the stand of the plaintiffs much less finding of the court below would not be sustainable.

I am afraid the aforementioned argument of the learned counsel for the appellants-defendants is not sustainable as no effort was made to place on record the decision rendered by the revenue court with regard to the partition proceedings. As a matter of fact, on a query, it was apprised that appeal is pending. Be that as it may, in the absence of partition, Hakam Singh could not have transferred the specific portion to the appellants-defendants as he was only co-owner. Sale deed reflects the sale of share only. Unilateral reference of handing over the possession would not change the nature of the property owned by co-sharers as is on each and every inch of land, until and unless partitioned is owned by co-owner. Till partition proceedings culminates into finality, injunction granted in my view is most innocuous and appropriate. I cannot form any different opinion than the arrived at by the courts below. No ground for interference is called for. The second appeal is dismissed.

20.11.2018
rajeev

(AMIT RAWAL)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**