

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

**RSA No.2722 of 2017 (O&M)
Date of decision:18.12.2018**

Mohammad Illiyas and another ... Appellants

Vs.

Rahiman and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs have not been successful in defending the appeal filed by the respondent-defendants against the judgment and decree of the trial Court, whereby, they were restrained from interfering/dispossessing the plaintiffs from agricultural land.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiffs submitted that concededly, parties to the lis are co-sharers. The defendants in a suit for injunction filed by the plaintiffs claimed the exclusive possession denying the ouster and possession, the trial Court injuncted the defendants but the Lower Appellate Court has gone arena of conjectures and surmises by non-suiting the plaintiffs of having not disclosed the pendency of the partition proceedings which came to be filed only after institution of the suit but did not deny the pendency of the partition proceedings before the revenue court, therefore, there is an abdication.

I am afraid the aforementioned argument is not sustainable as the plaintiffs have not been able to prove the exclusive possession and therefore, injunction could not have been granted. It is not a case of the appellants that consideration of injunction would have been there, if the defendants had been raising the construction subject to the evidence on record. In the absence of an exclusive possession, no injunction can be granted against the co-owner. The defendants did not set up counter claim in support of the alleged plea of ouster and exclusive possession. Since the partition proceedings are pending before the revenue Court, the parties are at liberty to seek the vindication of their grievance in the aforementioned proceedings.

As an upshot of my findings, the impugned judgment and decree cannot be faulted with. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 18, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No