

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

**RSA No.3246 of 2018 (O&M)
Date of Order:11.09.2018**

Jaina son of Geeta and another

..Appellants

Versus

Anant Ram son of Hariya son of Masudi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Jain, Advocate,
for the appellants.

Mr. Bhoop Singh, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Question which arises for consideration before this Court is “whether an unauthorized encroacher who purchases the property during the pendency of the suit from some of the co-sharers is entitled to retain possession deriving the original co-owners, namely, the plaintiffs to seek partition or a subsequent purchaser who has purchased undivided portion from a joint khata is required to file a suit for partition in order to get possession?”

Plaintiffs claiming to be son of owner Hariya filed the present suit claiming that defendants who are Jaina and Nanu son of Geeta have encroached upon their property.

Defendants contested the suit and pleaded that no part of the property has been encroached upon and in fact they have constructed their

house which also has a electric connection and they are paying the house tax. Defendants further pleaded that as per the settlement arrived at before the Panchayat, dated 08.06.2011, defendants had become owners in possession of the property.

Both the courts after discussing the evidence have found that the encroachment by the defendants is proved on file through a demarcation report Ex.P1 on the file carried out on 28.04.2011 by Raghbir Singh, Kanungo. Courts have further found that no right, title or interest in the immovable property worth more than Rs.100/- can be transferred by way of unregistered document. Therefore, the settlement arrived at before the Panchayat does not come to rescue the defendants.

Trial Court thus, decreed the suit. Defendants filed the first appeal. During pendency of the first appeal, they also filed an application under Order 41 Rule 27 of the Code of Civil Procedure for leading additional evidence. An application for amendment of the written statement was also filed which was dismissed on 29.11.2017. Through additional evidence, defendants wanted to produce a sale deed executed by some of the co-owners dated 18.12.2014, vide which the defendants claimed to have purchased 129 Sq. Yards area. The aforesaid application was dismissed by the learned first appellate court and thereafter dismissed the appeal after re-appreciating the evidence.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and photocopy of the record produced by learned counsel for the parties, correctness whereof is not being disputed.

Learned counsel for the appellants submitted that the suit filed

by the plaintiff for possession was not maintainable as required *ad valorem* court fee was not affixed. He submitted that objection was taken by the defendants but no court fee was attached. Hence, he submitted that the suit itself was liable to be dismissed.

However, this court find no substance in the argument because the learned trial court while decreeing the suit had directed the plaintiff to affix *ad valorem* court fee on the market value of the property. The irregularity in the payment of court fee has already been taken care of by the learned trial court and as informed the amount has been deposited. Hence, this court does not find any substance in the first argument.

Counsel for the appellants further submitted that the defendants were not associated when demarcation was carried out. He further drew attention of the court to the note given in the demarcation report, wherein it has been noted by the Kanungo that the Field Book of the village is missing. However, learned counsel has over looked the fact that the demarcation has been carried out with the help of Masavi(a lay out plan of the entire village prepared by the revenue authorities at the time of consolidation).

As regards, non-association of the defendants, it may be noted that the Kanungo while preparing a report has specifically mentioned that the defendants were present at the time of demarcation but they refused to sign the demarcation report. Defendants have led no evidence to prove that the revenue official was inimical to them. Still further, the revenue official has been examined as PW2. No suggestion was given to the revenue official on this aspect of the matter. Once, revenue official in his report has specifically written that the defendants were present at the spot when the

demarcation was carried out and defendants did not cross-examine the witness, therefore, there is no substance in the aforesaid contention.

Now the stage is set for considering the question of law framed earlier:-

QUESTION

whether an unauthorized encroacher who purchases the property during the pendency of the suit from some of the co-sharers is entitled to retain possession deriving the original co-owners, namely, the plaintiffs to partition or a subsequent purchaser who has purchased undivided portion from a joint khata is required to file a suit for partition in order to get possession?”

It is well settled that the subsequent purchaser in a joint khata steps into the shoes of his or her vendor. He at the most becomes co-owner with existing co-sharers. If someone has purchased undivided share in the joint khata, the only remedy for him is to file a suit for partition and thereafter claim possession, unless he is able to prove that he was put in possession by the aforesaid co-owner. In the considered opinion of this court, an unauthorised encroacher cannot be permitted to defeat the right of a co-owner for possession merely by purchasing an undivided share in the property during the pendency of the suit. If that is permitted an unauthorised encroacher would be given premium over the unauthorized occupation and the persons would occupy the joint property and thereafter force the co-sharers to sell the property. This cannot be permitted.

Hence, question of law is answered against the appellants.

In the present case, defendants claim to have purchased the property from some of the co-sharers. It is nowhere proved on the file that those co-sharers were in possession of the property. Defendants are only

wanting to regularize their unauthorised possession which in the considered opinion of this court cannot be permitted in this manner. The remedy for the defendants is to file a suit for possession by way of partition.

In view thereof, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

September 11, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No