

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-3945-2018 (O&M)
Date of Decision: 06.07.2018

Hanuman

--Appellant

Versus

Chattar Singh & others

--Respondents

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

Present:- Mr. Sant Lal Barwala, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff Hanuman filed a suit seeking decree of permanent injunction to the effect that he along with proforma defendants no.3 and 4 are owners in possession of 12 marla land i.e. 2/1491 share vide sale deed no.6300 dated 3.9.2010 and supplementary agreement bearing vasika no.6797 dated 21.9.2010 and mutation no.2699 dated 28.9.2010 out of the total land measuring 447 kanal 6 marla and to which defendant no.1 Chattar Singh has no right, title or interest and as such, he be restrained from taking forcible possession and from dispossessing the plaintiff and defendants no.3 and 4 or from interfering in the construction work being carried out over the suit property.

Suit of the plaintiff was decreed vide judgement and decree dated 23.3.2016 passed by Civil Judge (Jr. Divn.), Hisar. Civil Appeal having been preferred by defendant Chattar Singh, the same has been accepted vide judgement dated 19.4.2018 passed by learned Additional District Judge, Hisar and the suit of the plaintiff stands dismissed.

Under such backdrop the plaintiff has filed the present second appeal before this Court.

Briefly, it may be noticed that the plaintiff (appellant herein) had relied upon a sale deed no.5010 dated 30.10.2001 vide which Chattar Singh defendant/respondent had sold the suit property/land measuring 12 marla to Sheonand Beniwal i.e. vendor of the plaintiff in Village Shahpur out of khewat no.35 khata no.56, killa no.81 measuring 458 kanal 14 marla. In other words as per sale deed dated 30.10.2001, 12 marla i.e. 12/9174 share land was sold. The dimensions in the sale deed were also furnished and it was specifically mentioned that on the Eastern, Western and Northern side there is property of Chattar Singh and on the Southern side there is a Rasta/passage measuring 50 feet. Present appellant/plaintiff purchased the suit land from Sheonand vide sale deed no. 6300 dated 3.9.2010 (Ex.P-11) which carried a different description of the property. Appellant had also relied upon supplementary sale deed dated 21.9.2010 (Ex.P-12) where also there was a different dimension of the suit property as opposed to the initial sale deed bearing no.5010 dated 30.10.2001 (Ex.P-10) between Chattar Singh and Sheonand Beniwal i.e. vendor of the plaintiff.

The lower appellate court upon due appreciation of evidence has recorded a finding that the plaintiff/appellant was seeking injunction against Chattar Singh qua suit property under the garb of sale deed Ex.P-11 and P-12 but the property claimed as suit property in the plaint for which injunction was sought, was entirely different from the property purchased by Sheonand Beniwal (vendor of the plaintiff) from Chattar Singh vide registered sale deed dated 30.10.2001. Further finding of fact has been recorded that the plaintiff/appellant has not proved that he is in possession of the suit land. Such finding is on the basis of revenue records i.e. copy of jamabandi for the year 2005-2006 (Ex.D-1) and khasra girdawari (Ex.D-

2/Ex.D-3).

It is well settled that co-sharers having separate possession out of joint property by way of mutual consent and being in exclusive possession of share would be entitled to injunction to safeguard his possession as a co-owner. Otherwise, in the absence of exclusive possession every co-sharer would be deemed to be in possession of every inch of land and it would be subject to partition of land by meets and bounds. In such circumstances, a co-sharer would not be entitled to the relief of permanent injunction.

A finding of fact having been recorded by the first appellate court in the impugned judgement with regard to the appellant herein being not in exclusive possession of the suit property, which otherwise, is part of a joint property, no interference in the same is warranted.

The present appeal does not raise any question of law much less substantial question of law.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

06.07.2018

lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No