

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4614 of 2017 (O&M)

Date of decision: 20.03.2018

Swaran Kaur through LRs and others

..... Appellants

Versus

Dulla and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikram Anand, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the finding arrived at by the learned First Appellate Court.

Plaintiffs had filed a suit for permanent injunction restraining the defendants from taking forcible possession of the land measuring 39 kanals and 4 marlas. Learned trial Court after recording a finding that the parties are co-owners, decreed the suit, restraining the defendants from taking forcible possession of the suit land except due course of law. Whereas in the appeal preferred before the learned First Appellate Court, it has been recorded that the plaintiff appeared as PW-1 and admitted that she and her son are not in cultivating possession of the suit land. The Court has also noticed that the parties are co-sharers and the remedy available to the plaintiffs is only by filing appropriate proceeding seeking partition of the property.

Learned counsel for the appellants has fairly admitted that the

plaintiff while appearing in the witness-box as PW-1 has admitted that she or her son are not in cultivating possession of the suit land but it is being cultivated through nephew of her husband.

Be that as it may, the suit is only for injunction. The parties are co-sharers. Once the plaintiffs are not in possession of the property, the suit for injunction would not be maintainable.

Learned counsel for the appellants has fairly admitted that the proceedings for partition of the suit property are already pending.

In view thereof, there is no scope for interference with the finding arrived at by the learned First Appellate Court.

Appeal is dismissed.

20.03.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No