

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5191 of 2017

Date of Decision: 15.01.2018

Gurmail Kaur

...Appellant

VERSUS

Amar Nath and Others

...Respondents

BEFORE : HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr.S.S.Bhinder, Advocate, for the appellant.

RITU BAHRI, J. (Oral)

CM No.13899-C of 2017

For the reasons mentioned in the application, delay of 28 days in refiling the appeal is condoned.

Application stands disposed of.

Main Case

The appellant has come in appeal against the judgment and decree of the learned trial Court dated 16.02.2017 whereby the suit of the appellant for permanent injunction has been dismissed.

A perusal of the judgment passed by the learned trial Court shows that the appellant is the co-sharer in the suit land and he filed a suit for permanent injunction restraining the defendant for raising any construction and change the nature of the suit land illegally and forcibly. As per jamabandi for the year 2008-2009 Ex.P1 shows that plaintiff is owner and in possession of the suit land. Since defendants had not led any evidence to rebut the case of the plaintiff, as such, he is entitled to injunction as prayed for.

The learned appellate Court has set aside the order the trial Court in view of the judgments cited in page No.6 of its judgment wherein it was observed that there was ample authority for the proposition that co-sharer in exclusive possession of a portion of an undivided holding, can transfer it subject to adjustment of rights of the co-sharers at the time of

partition. As such, co-sharer/co-owner cannot be injuncted from raising construction over the land in his possession when all other co-sharers have similarly raised construction. The appellate Court had set aside the order of the trial Court on the ground that plaintiff had alternate efficacious remedy by filing a suit for partition and in view of bar imposed under Section 41(h) of Specific Relief Act, the relief of permanent injunction was not available to the plaintiff. Learned trial Court was wholly oblivious of the aforesaid legal principles and fell in error in decreeing the suit of the plaintiff. The judgment and decree was wholly unsustainable in the eyes of law and being perverse is liable to be set aside.

So after going through the judgment of lower appellate Court, no substantial question of law is arising out as the orders of the appellate Court does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

15.01.2018
anil

(RITU BAHRI)
JUDGE