

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5400 of 2017

Date of Decision.20.03.2018

Beant Kaur

.....Appellant

Vs

Mohinder Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Suri, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

The appellant-defendant No.1 is aggrieved against the judgment and decree dated 31.03.2016 rendered by the trial Court whereby the suit of the respondent-plaintiff for permanent injunction had been decreed and the judgment and decree dated 03.04.2017 whereby the lower Appellate Court dismissed the appeal preferred against the judgment and decree of the trial Court.

The plaintiff instituted the suit on the ground that he along with defendant was owner in possession since life time of their ancestors in equal share of house measuring 25'x60', which was located in red line (*lal lakir*) situated at village Kalho. On account of death of Bogha Singh, the parties became owners in equal share but the defendant No.1 wanted to sell the entire house and as such, cause of action accrued to file the suit.

The aforementioned suit was contested by the appellant-defendant No.1 by denying the aforementioned assertions in the suit. It was stated that she has already sold the house of Darshan Singh son of Jaila Singh resident of Kotali Kalan.

Since the parties were at variance, the trial Court framed the

following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 3. Relief.”*

In support of his case, the plaintiff examined Gurjit Singh as PW1, Gurcharan Singh as PW-2, Mohinder Singh plaintiff himself appeared as PW3 and tendered into evidence copy of sale deed dated 2.2.2006 Ex.PA. On the other hand, the defendant No.1 stepped into witness box herself as DW1, DW2 Surjit Singh, Shivji Singh DW3 and tendered into evidenced electricity bill as Ex.D1, electricity bill dated 24.12.2011 as Ex.D2 and voter list Ex.D3 and D4.

The trial Court on the basis of preponderance of aforementioned evidence, particularly the site plan found that the plaintiff had been in possession of the house No.5 whereas the appellant-defendant in house No.5A and decreed the suit. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Vivek Suri, learned counsel appearing on behalf of the appellant-defendant submitted that the finding of the Courts below by taking the aid of the provisions of Section 22 of the Hindu Succession Act were totally erroneous as right of pre-emption has rightly been taken away. No doubt, parties were co-owners to the extent of 1/3rd share on death of Bogha Singh, who died intestate. Both the parties had been residing in their respective shares and therefore, there was no threat perception to the plaintiff seeking restraint order against the defendants vis-à-vis the suit

property as described in the site plan, therefore, there is abdication, illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Suri, for, the injunction granted is most innocuous. It has been found that both the parties are in respective portion of their house No.5 and 5-A. The injunction had been sought in respect of the property described in site plan for which the defendant has no right. Any co-sharer who is in exclusive possession can always seek injunction against the other co-owner. The instant case is of such nature where the appellant-defendant has not been able to prove the same. The Court below has given a passing reference with regard to application of provisions of Section 22 of the Hindu Succession Act that if the defendant wants to sell his/her share of the property, the preferential right would be of the plaintiff. In my view, such observations are not contradictory to the statutory provisions of the Act but in order to avoid a stranger in the property owned by the co-owners, it is always better to give an option to the other co-sharer first. This is what the import of Section 3 and 4 of the Indian Partition Act.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No