

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-6433-2017 (O&M)
Date of Decision: 19.07.2018

Gursewak Singh & others

--Appellants

Versus

Mohinderpal Singh

--Respondent

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

Present:- Mr. L.S. Sidhu, Advocate for the appellants.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiffs are in second appeal before this Court.

Brief facts of the case are that the plaintiffs (appellants herein) instituted a suit for permanent injunction restraining the defendants from raising any type of construction over the suit land and from changing the nature of the suit land till partition is effected.

Vide decision dated 7.4.2016 passed by the Trial Court, suit of the plaintiffs was decreed. A civil appeal having been preferred by the defendant Mohinderpal Singh, the same has been accepted vide judgement dated 1.8.2017 passed by the learned Additional District Judge, Moga and the suit of the plaintiffs has been dismissed.

Resultantly the instant second appeal.

Counsel for the appellants has been heard at length.

The entire case set up on behalf of the plaintiffs was that they along with defendant are co-sharers in the suit land and the entire land is agricultural in nature. Furthermore, the holding *inter se* the parties is joint and no partition has taken place. Perusal of the decision passed by the Trial Court would reveal that relief of permanent injunction has been granted by observing that since suit land is jointly owned and possessed by the co-

sharers, every co-sharer owns each and every inch of such land and is entitled to the enjoyment of the property.

The Lower Appellate Court while accepting the appeal has appreciated the evidence adduced on record in the shape of Jamabandi relating to the suit land for the year 2007-2008 Ex.P-1 which reflected that the suit land is in exclusive possession of the defendant (respondent herein). Furthermore, it has been noticed that PW-1 Balwant Singh as also plaintiff-appellant Gursewak Singh admitted in their cross-examination that the defendant-respondent had already constructed three shops over the suit property and is in exclusive possession of the vacant land at the back side of such shops. Both of the afore-noticed witnesses admitted that co-owners are in separate possession of the land, even though, the same having not been partitioned by metes and bounds.

Even during the course of hearing before this Court, learned counsel has conceded that as on date of filing of the suit, partition proceedings had not been initiated. Partition proceedings are stated to have been filed during the pendency of the civil appeal before the Lower Appellate Court.

Under such circumstances, even though, the suit land may be part of a joint holding of the parties to the lis and other persons as co-owners in a *khewat* but a finding of fact having been recorded upon due appreciation of documentary and oral evidence that the defendant was in exclusive possession of a certain parcel of land vested in a joint holding, the injunction sought by the plaintiffs/appellants herein could not have been granted.

In the considered view of this Court, there is no infirmity in the impugned judgement dated 1.8.2017 passed by the Lower Appellate Court and in terms of which a civil appeal preferred by the defendant-Mohinderpal Singh has been accepted and suit of the plaintiffs/appellants herein has been dismissed.

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

Appeal is dismissed.

Since the main appeal has been dismissed, pending application (s), if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

19.07.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No