

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

**RSA No.748 of 2017 (O&M)
Date of Decision.24.01.2018**

Rati Ram and others

.....Appellants

Vs

Tota Ram and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishwajeet Singh, Advocate
for the appellants.

-:-

AMIT RAWAL J.(ORAL)

C.M. No.1625-C of 2017

The application for impleading the legal representatives of deceased-appellant No.2 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.748 of 2017

The regular second appeal is directed against the preliminary decree rendered by the trial Court and affirmed by the lower Appellate Court wherein while granting a declaration of ownership to the extent of 1/3rd share in favour of the plaintiffs and 2/3rd share in favour of defendant No.6 to 9, the relief of permanent injunction restraining defendant No.6 to 9 from raising any construction over the vacant portion as mentioned in the plaint has been declined.

Learned counsel appearing on behalf of the appellants-plaintiffs submitted that along with suit seeking partition of the suit property having a common share along with defendant Nos.6 to 9, who became co-owners in view of exchange deed entered into by defendant Nos.1 to 5 in favour of

defendant No.6 to 9, an application under Order 39 Rule 1 and 2 CPC was also moved, which had been declined. He does not press with regard to determination of share by the Courts below in view of preliminary decree but is aggrieved of only the non-grant of injunction against defendant Nos.6 to 9 for raising the construction on the vacant piece of land. He submitted that against the dismissal of the application for permanent injunction, an appeal was preferred but defendant Nos.6 to 9 started raising construction during the pendency of appeal. In a partition suit, all the co-owners are owner of every inch of land and therefore, any construction would definitely diminish the value of the property. A party can claim a right in the property on the basis of possession at the time of drawing of the final decree. This aspect has totally been ignored by the Courts below and therefore, there is illegality and perversity.

I have heard learned counsel for the appellants and appraised the paper book. The only challenge in the present appeal is with regard to non-granting of injunction as passing of preliminary decree to the extent of respective shares have already been upheld. Defendant Nos.6 to 9, who have become owners on the basis of exchange deed, already raised construction on some portion of the property and other portion, as per submissions, is lying vacant. The aforementioned fact would be seen only at the time of drawing final decree with regard to potentiality, location and value of the land but not at this stage. Nothing prevented the appellants-plaintiffs to move an application for drawing of the final decree in order to get possession according to their respective shares.

There is another aspect of the matter. In a compromise so arrived at between the parties, the appellants-plaintiffs had not objected

defendant No.6 to 9 to raise construction. It is in this backdrop of the matter, injunction was declined. But, in my view, this would not take away valuable right of the appellants-plaintiffs for the purpose of drawing final decree.

In view of the aforementioned observations, the judgments and decrees passed by the Courts below are upheld and the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 24, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No