

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

RSA No.2479 of 2019(O&M)

Date of decision: 27.5.2019

Ravinder Singh

.....Appellant

VERSUS

Daler Singh (since deceased) through his LRs and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Dadwal, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the respondents/defendants from changing nature of the land by putting earth and raising construction qua land measuring 53 kanals, detailed in head-note of the plaint was dismissed by the trial Court vide judgment and decree dated 30.05.2018 and appeal preferred by unsuccessful plaintiff/appellant came to be dismissed by the Additional District Judge, Hoshiarpur.

The appellant has claimed that he along with his brother and defendants No.2 and 3 namely Manjit Singh and Tarlochan Singh sons of Parsan Singh is joint owner of the suit land. The appellant along with his brother is in exclusive possession of land measuring 26 kanal 11 marlas comprising khasra numbers, detailed in para 1 of judgment of the trial Court. Defendants No.2 and 3 in connivance with defendant No.1 want to develop a colony in the joint land and in the land which is in exclusive

possession of the appellant. The defendants have no right to change nature of land from agriculture to commercial without consent and permission of the plaintiff. In case land is converted to commercial use, the appellant has to pay development charges imposed by the government. Defendants are also planning to sell the suit land in the shape of plots. Defendants No.2 and 3 have sold 4 kanals land to defendant No.1 vide sale deed dated 02.09.2014 and in this sale, khasra numbers which are in exclusive possession of plaintiff have also been mentioned and all the defendants in connivance with each other are trying to put earth, construct roads, walls and gates in the land jointly owned and exclusively possessed by the plaintiff.

Defendant No.1 died during pendency of the suit. However, defendants filed the written statement raising preliminary objection that this is the third round of litigation of the same nature qua the same property against the same defendants except defendant No.1 who is to step into the shoes of vendors i.e. defendants No.2 and 3. In the second round of litigation, suit is pending in the Court of Civil Judge (Junior Division), Dasuya for plaintiff's evidence in which application under Order 39 Rules 1 and 2 Code of Civil Procedure, 1908 (in short 'CPC') was dismissed. Surinder Pal Singh brother of the plaintiff is behind the present suit. Surinder Pal Singh filed suit of the same nature qua the same property but parties arrived at compromise and in pursuance thereof, the suit was dismissed as withdrawn vide order dated 16.01.2014.

The plaintiff is settled abroad i.e. Australia for the past many years. He did not visit India for the past two years nor he gave any authority or power of attorney to anyone to file the present suit. The

plaintiff has not come to the Court with clean hands; suit has become infructuous as soil has already been placed, boundary wall has been constructed, construction has been done on several plots and road has been carved out. The suit land was partitioned between the co-sharers since their predecessors and they are in exclusive possession as per their share and have no right to restrain the other co-sharer in exclusive possession from raising construction in their respective possession. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The trial Court framed issues reproduced in para 3 of the judgment of said Court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 pertaining to permanent injunction against the appellant and accordingly the suit was dismissed without costs. As has been noticed hereinbefore, the appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Hoshiarpur.

Counsel for the appellant would argue that as land measuring 53 kanals, detailed in head-note of the plaint is recorded to be co-ownership of successors in interest of Sh. Darshan Singh and Parsan Singh, the defendants cannot be permitted to change nature of joint land by raising construction till the land is partitioned by metes and bounds in appropriate proceedings. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Maharwal Khewaji Trust (Regd) Faridkot Vs. Baldev Dass, 2004(4) RCR (Civil) 760.** Further reference has been made to judgments of this Court **Aarlia Builders and Developers Pvt.**

Ltd. Vs. Sukhda Promoters Private Ltd. and others, 2014 (30) RCR (Civil) 191, Ram Chander Vs. Bhim Singh and others along with connected case, 2008(3) RCR (Civil) 685, Pritam Singh and others Vs. Chanan Singh and others, 2002 (3) PLR 702, Bachan Singh Vs. Swaran Singh, 2000 (3) RCR (Civil) 70 and Bhartu Vs. Ram Sarup, 1981 PLJ 204,

Be that as it may, one of the contentions raised by the appellant is that in the sale deed dated 02.09.2014 vide which 4 kanals of land was sold by defendants No.2 and 3 in favour of defendant No.1, there is reference to khasra numbers which are in exclusive possession of appellant/plaintiff. As per settled position in law, a co-sharer is entitle to sell his share in joint land irrespective of whether he is in exclusive possession thereof or the same is in exclusive possession of other co-sharer. In case land sold by a co-sharer is in exclusive possession of other co-sharer, the purchaser from such a co-sharer would only step into the shoes of his vendor or to say that he would not acquire better right in the purchased land viz-a-viz the rights held by his vendor. That being so, the appellant cannot express any grievance with regard to sale of land by his co-sharers even qua khasra numbers which are stated to be in exclusive possession of the appellant/plaintiff. At the same time, counsel for the appellant has failed to point out any materials that either of the respondents/defendants are trying to interfere in land stated to be in exclusive possession of the plaintiff. In this view of the matter, plea raised by the appellant/plaintiff in respect of land in his exclusive possession is devoid of merit and has rightly been rejected by the Courts.

There cannot be dispute about settled position in law that a co-sharer in exclusive possession can use the joint land in the manner he likes. Merely because a co-sharer wants to raise construction on land in his exclusive possession would not entitle his co-sharer to seek injunction because any such construction raised by the co-sharer would be subject to fall out of partition proceedings, initiated by either of the co-sharers.

One of the pleas raised by the plaintiff is that defendants want to convert agricultural land into commercial and in the process, the appellant may incur liability to pay development charges etc. Counsel for the appellant has not pointed out any materials on record to substantiate his plea that he has been called upon by any department/authority to pay development charges as the defendants intended to develop the land into a colony or residential area. He has also failed to advance any argument much less meaningful that if the defendants develop the joint land into commercial property, the same would result in diminishing its value or utility or the acts of co-owner can be said to be detrimental to the interest of other co-owner. In this view of the matter, the appellant cannot derive any advantage to his contention from the Division Bench judgment of this Court in **Bachan Singh's case** (supra).

Counsel for the appellant has referred to judgment of Hon'ble the Supreme Court **Maharwal Khewaji Trust (Regd.), Faridkot's case** (supra). In the said case, the matter with regard to grant of temporary injunction in a suit for possession was carried to Hon'ble the Supreme Court. In the said case, parties to the dispute were not the co-owners. On the other hand, the aforesaid Trust had filed a suit for possession of suit scheduled property and sought injunction restraining the respondent

therein from alienating the suit property and putting up any construction thereon. In view of the peculiar facts and circumstances of the said case, the appellant cannot derive aid from the said judgment in a case where he is seeking injunction against his co-owner.

In **Pritam Singh and others' case** (supra), the matter pertained to grant of interim injunction pending decision of partition proceedings. Counsel for the appellant has not disputed that earlier Surinder Pal Singh, his brother, filed a suit for injunction which was later dismissed as withdrawn. Neither the appellant nor his brother, for the reason best known, has not sought partition of the joint land but are trying to seek injunction against their co-sharers on one pretext or the other.

In **Aarlia Builders and Developers Pvt. Ltd.'s case** (supra), the partition proceedings were pending when a co-owner sought injunction against the other co-owner. Taking into consideration pendency of partition proceedings, the Court made an order restraining the other co-sharer from raising construction during pendency of partition case. In the given scenario, the appellant cannot derive advantage to his contention from the judgments in **Pritam Singh and others' case** (supra) and **Aarlia Builders and Developers Pvt. Ltd.'s case** (supra).

The judgment by a Full Bench of this Court in **Bhartu's case** (supra) deals with the rights and liabilities of co-sharers and has got no bearing to accept plea of the appellant restraining his co-sharers from raising construction on joint land, in view of the discussion made hereinbefore.

Similarly, the judgment by another Full Bench of this Court in **Ram Chander's case** (supra) has got no bearing on the facts of the case at

hand when otherwise there is no dispute about settled position in law that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest from the portion in his specific possession, his vendee would be entitle to protect the portion so transferred without, however, asserting exclusive ownership to the portion so transferred till such time the joint estate is not partitioned. In view of the above, I find it difficult to accept contention of the appellant that consistent findings recorded by the Courts suffer from an error much less perversity, warranting intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

MAY 27, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no