

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

RSA-2624-2012 (O&M)

Date of decision: 04.11.2019

Bijender Singh and another

...Appellants

Versus

Sumitra Devi

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

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

Mr. V.K. Jindal, Sr. Advocate with
Ms. Janya Sirohi, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Bijender Singh and Joginder Singh both real brothers, residents of village Asalwas Marhetta, Tehsil & District Bhiwani, had filed a suit against defendant Sumitra Devi wife of Sh. Gulab Singh, resident of Hisar, seeking a decree for permanent injunction, restraining the defendant from interfering into their peaceful possession over the plot measuring 0K-9M i.e. 270 sq. yards comprised in khewat No.1904/1844min, khatoni No.2307, khasra No.172//16/2/2 as per jamabandi for the year 2002-03 situated at village Bhiwani Lohar, Tehsil & District Bhiwani, depicted by letters ABCD shown in red colour in the site plan attached with the plaint and further restraining the defendant from demolishing the boundary wall shown by letters ABCD in the site plan and from raising any construction over the suit property.

As per version of the plaintiffs, their father Sh. Nihal Singh son of Chhailu Ram had purchased the plot in suit from one Bhanwar Singh son of Lekh Ram, vide a registered sale deed dated 19.08.1981. Sh. Nihal Singh had expired on 17.08.1998 and after his death, the plaintiffs became owners in possession of the suit property, by way of inheritance on the basis of mutation No.13425 dated 03.11.1998. They have constructed a boundary wall around the suit property, which is depicted by letters ABCD in the site plan attached with the plaint. On 27.08.2010, when the plaintiffs had started raising some construction in the plot, the defendant arrived at the spot and tried to obstruct the construction work, claiming herself to be the owner of the suit property, when as a matter of fact, she has no concern or connection therewith. When the defendant remained adamant and threatened to construct a temple in the suit property, the plaintiffs knocked at the door of the Court, by way of filing the suit in question before the Civil Court at Bhiwani.

On being put to notice, the defendant appeared and filed a written statement, contesting the suit, inter alia raising preliminary objections that the suit was not maintainable; that the plaintiffs lacked locus standi to file the suit; that no cause of action arose to the plaintiffs to bring the suit; that the plaintiffs were estopped by their own act and conduct from filing the suit etc.

On merits, the defendant contended that the site plan filed by the plaintiffs along with plaint was factually wrong, since therein, they have not shown 4 marlas of land of Shree Shree 1008 Baba Gulab Giri

Mandir and Ashram, which is situated on western side of property of Prem and the plaintiffs want to grab the property of Mandir/Ashram by way of filing the present suit; that Shree Shree 1008 Baba Gulab Giri Mandir and Ashram is owner in possession of 0K-4M of land comprised in khasra No.172//16/2(5-3) by way of a registered gift deed dated 25.06.1998. The construction of Mandir and Ashram has already been raised in the plot and statues of Deties have been installed; that the said gift deed was accepted by Mahabir Singh son of Mehar Singh, resident of Bhiwani in favour of Mandir/Ashram and since then, the defendant and Mahabir Singh and other persons, who have got faith in the Mandir have placed the said idols of Deties and are taking care of Mandir/Ashram. The plaintiffs have not made Mandir as a party, which was necessary one. Denying, the other allegations, the defendant prayed for dismissal of the suit.

No replication was filed.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are owners in possession of the plot in dispute as detailed in the head note of the plaint? OPP
2. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for? OPP.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
4. Whether the plaintiffs have no locus standi/cause of action to file the present suit? OPD.
5. Whether the suit of the plaintiffs is bad for non-joinder of necessary parties or mis-joinder of parties? OPD.

6. Whether the suit of the plaintiffs is bad for want of Court Fee?OPD.

7. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of their evidence, the plaintiffs examined Ishwar Singh Patwari as PW1, Kanwarpal Draughtsman as PW2, Bijender Singh as PW3 and Rakesh Godara as PW-4. In rebuttal, defendant Sumitra Devi got her statement recorded as DW1 and thereafter closed her evidence.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Bhiwani decided issues No.1, 2 & 4 against the plaintiffs, issues No.3, 5 & 6 were not pressed by learned counsel for the parties during the course of arguments and such were decided in favour of the plaintiffs and against the defendant and vide judgment and decree dated 06.01.2012, the trial Court dismissed the suit of the plaintiffs.

The plaintiffs felt aggrieved by the said judgment and decree passed by the trial Court and had approached District Courts at Bhiwani, by way of filing an appeal. That appeal was assigned to Addl. District Judge, Bhiwani, who vide judgment and decree dated 21.03.2012 dismissed the appeal.

Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court, by way of filing a Regular Second Appeal, notice of which was given to respondent/defendant who has put in appearance through counsel.

I have heard learned counsel for the parties besides going

through the record.

A perusal of the judgment passed by the trial Court goes to show that it has specifically been noticed by such Court in para No.11 of the judgment that a perusal of sale deed Ex.P16 vide which Nihal Singh purchased the suit property, goes to show that the possession of any specific portion was not handed over to him and though, the plaintiffs have heavily placed reliance upon the site plan Ex.P4 but therein also, they have mentioned that on the western side of the property of the plaintiffs, property of Mandir/Ashram is situated, in that way, not denying the fact that Mandir is owner in possession of the property in the same khasra number. Furthermore, plaintiff No.1 when appeared in the witness box as PW3 had admitted in his cross examination that there are many co-sharers in the suit property and he had seen the registry in favour of the temple, vide which 4 marlas was given to the temple showing thereby that temple was co-sharer in the suit property. Further, the plaintiff No.1 had admitted in his cross examination that partition had not taken place so far.

In para No.13 of the judgment, the trial Court examining the matter from another angle has observed that the plaintiff when stepped into the witness box had admitted in his cross examination that when Nihal Singh had purchased the suit property from Bhanwar Singh, he had constructed four walls enclosing the suit property. The plaintiffs relied upon report of Local Commissioner also. Such report and rough site plan Ex.P6 as well as photographs show that the defendant was constructing

the temple at the spot when the Local Commissioner visited the spot and if the plea of the plaintiffs is allowed then it would amount to ousting a co-sharer i.e. temple and restraining it from enjoying the suit property, whereas, each and every co-sharer is entitled to enjoy each and every portion of the land upto its fullest and no co-sharer can seek the possession of any specific portion without getting the same partitioned. In that way, in terms of the sale deed in favour of father of the plaintiffs, they had purchased share in the joint land and not specific portion, therefore, the possession of plaintiffs qua the disputed property could not be taken. The plaintiffs were not in exclusive possession of the suit property. The revenue record also does not support their contention of being in exclusive possession.

Coming to the judgment passed by Addl. District Judge, Bhiwani, he has also reached the same conclusion in the process affirming the judgment and decree passed by the trial Court.

The concurrent findings recorded by the Courts below that the plaintiffs are not entitled to decree for permanent injunction prayed for, for the reason that they have failed to prove their exclusive possession over the suit property, are well reasoned and supported by the evidence available on record. The judgments so passed do not suffer from any illegality or infirmity, rather, they show proper appreciation of legal and factual position. There is no reason to interfere with such concurrent findings recorded by the Courts below finding the plaintiffs not entitled to decree for permanent injunction prayed for. No substantial question of

law arises in this case. Therefore, finding no merit in the instant appeal the same stands dismissed.

04.11.2019

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(H.S. MADAAN)
JUDGE

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