

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

RSA No.3950 of 2012 (O&M)

Date of Decision: December 11, 2019

Chanan Singh

...Appellant

Versus

Jaswinder Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harsh Bungar, Advocate
for the appellant.

Mr. R.S. Chauhan, Advocate
for respondents No.1 to 4.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been filed by the appellant-plaintiff No.1 (in short 'the appellant') seeking to challenge the judgment and decree dated 03.03.2011 passed by the lower court whereby, the suit filed by the appellant was dismissed, as well as judgment and decree dated 24.04.2012 passed by the first Appellate Court whereby, the appeal filed by the appellant was also dismissed.

2. In brief, the facts of the case are that the appellant along with respondents No.6 to 10 herein filed a suit that they along with respondent No.5-defendant No.5 (in short 'respondent No.5') are co-owners of the suit land (as detailed in the headnote of the plaint) situated in village Khurampur, Tehsil Phagwara as per jamabandi for the year 2003-04. It was

averred that respondent No.5 sold his share in the suit land vide sale deed dated 31.12.2007 to respondents No.1 to 4-defendants No.1 to 4 (in short 'respondents No.1 to 4'). It was submitted that respondent No.5 has sold his share in the suit land along with one Khasra number 357/8-0, which is situated at a distance of 8 acres from suit land and lying on the other side near Shamshan Ghat of the village, but respondents No.1 to 4 took forcible, illegal and wrong possession on the main Hoshiarpur road, Khurampur, Tehsil Phagwara of the land bearing Khasra No.870/489/3-4, 872/490/3-4M, 492/9-0, 491/4-14. It was alleged that respondents No.1 to 4 are threatening to sell, alienate the specific Khasra number of land falling in their share and also beyond their share to some other persons without effecting partition by metes and bounds. With these allegations, the appellant and respondents No.6 to 10 claimed the relief of permanent injunction restraining respondents No.1 to 5 from taking forcible possession of the suit land, as the property has not been partitioned by metes and bounds.

3. Upon notice, respondent No.1 to 4 appeared and filed their written statement. Apart from taking the preliminary objections as to the maintainability, cause of action, locus standi etc., it was submitted that appellant and his brothers are co-owners of the suit land and the suit property has been shown as joint in the revenue record, however, the parties were in their respective possession of the land as per their shares. It was admitted that respondent No.5 had sold all his share in the suit land vide sale deed dated 25.12.2007 to them. It was averred that respondent No.5 was in possession of specific portion over the suit land and delivered the

specific possession to them and also attached a site plan with the sale deed to this effect. It was claimed that respondents No.1 to 4 have raised a boundary wall around the said area and the same is in their exclusive possession. It was submitted that respondents No.1 to 4 are entitled to retain possession of their specific portion in the suit land. Remaining averments of the plaint were denied. However, upon notice respondent No.5 did not turn up and he was proceeded against ex parte.

4. From the pleadings of the parties, issues were framed and evidence was led by both the parties. On appreciating the evidence, the lower court dismissed the suit of the appellant and even the appeal filed by the appellant was dismissed by the first Appellate Court. Now judgments and decrees passed by both the courts below have been assailed in this regular second appeal.

5. Counsel appearing on behalf of the appellant argues that both the courts have failed to appreciate the fact that respondent No.5 was not in possession of any specific portion out of any specific Khasra number, as such, respondents No.1 to 4 have become co-sharers in the joint holding, as the suit property has yet not been partitioned by metes and bounds. It is contended that a co-owner cannot be permitted to utilize the holding to the exclusion of the other co-sharers, which is detrimental to the interest of other co-sharers. It is also submitted that both the courts below have miserably failed to appreciate the evidence of PW1 Chanan Singh, which has been duly corroborated by PW2 Balwant Singh.

6. Per contra, counsel appearing on behalf of respondents No.1 to 4 argues that there is nothing wrong in the well reasoned findings returned

by both the courts below and no ground is made out to interfere with the same. It is contended that arguments so advanced by counsel for the appellant have been dealt with in detail by the courts below.

7. I have heard counsel for the parties and with their assistance, have gone through the case file.

8. The lower court, while dismissing the suit of the appellant, has observed that the relief of permanent injunction is prohibitory relief and once the overt act is complete, the remedy lies some where else i.e. the suit for possession and not by filing of the suit for permanent injunction. The lower court further observed that the appellant and other plaintiffs have themselves admitted that respondents No.1 to 4 are in possession of the suit property. The findings returned by the lower court were affirmed in appeal by the first Appellate Court.

9. During the pendency of the appeal before this court, on 12.03.2019 this court passed the following orders:-

“Arguments have been heard at some length.

Counsel for the plaintiff-appellant submits that the land comprised in Khasra No.357 is not located on the Hoshiarpur Road and there is no construction over the said land. On the other hand, learned counsel for the respondents point out that the defendants who are purchasers are in possession of the land including Khasra No.357 to the extent of 1/6th share and have raised construction. However, counsel for the parties pray for time to support their contentions by filing affidavits of their respective clients.

List in urgent on 18.03.2019.”

Pursuant to the said order, appellant-Chanan Singh filed an

affidavit stating therein that he is in exclusive possession over Khasra No.357 and this entire Khasra No.357 is being cultivated and there is no construction on the said Khasra No.357. On the other hand, respondent No.1 filed an affidavit stating therein that as per the sale deed 31.12.2007, Kirpal Singh, brother of the appellant sold 3K-7M out of total land measuring 20K-2M comprised in Khasra No.870/489/3-4, 872/490/3-4, 492/9-0, 491/4-14 as well as 1K-6-2/3M land i.e. 1/6th share out of the total land measuring 8K comprised in Khasra No.357(8-0) and the possession of the land purchased was delivered to the vendees by the vendor and the same was mutated in the name of the respondents. It is further stated by respondent No.1 in his affidavit that respondents have raised the construction only in land measuring 3K-7M and constructed the shop as well as boundary wall and installed gate in the land comprised in 870/489/3-4, 872/490/3-4, 492/9-0, 491/4-14 and no construction has been raised in 1K-6-2/3M out of land comprised in Khasra No.357 and the same is being cultivated. From the affidavits furnished by both the parties, it is made out that both the parties are claiming possession over the land comprised in Khasra No.357 and stated that they are cultivating the same. So from these affidavits furnished by the parties, this controversy cannot be set at rest and therefore, this court proceeded to decide the appeal on its merits and evidence available.

10. The pleaded case of the appellant is that he and his brothers are co-owners of the suit land measuring 20K-2M comprised in Khasra number 870/489/3-4, 872/490/3-4M, 492/9-0, 491/4-14 and 357/8-0 and respondent No.5 sold his share in the suit land to respondents No.1 to 4 vide

sale deed dated Ex.D1, however, respondents No.1 to 4 have taken forcible possession of the land which lies on the main Hoshiarpur road bearing Khasra number 870/489/3-4, 872/490/3-4M, 492/9-0, 491/4-14 whereas, Khasra No.357/8-0 is situated at Village Khurampur, Tehsil Phagwara at a distance of about 08 acres of land from Khasra number 870/489/3-4, 872/490/3-4M, 492/9-0, 491/4-14. In this background, stand of the appellant is that since possession of land situated in Khasra No.357/8-0 had not been handed over to the vendees, as such, they were not in exclusive possession of the same. In support of his case, appellant-Chanan Singh stepped into the witness box as PW1 and during his cross-examination, he admitted that the land sold by his brother Kirpal Singh is situated at Hoshiarpur road and possession of the land has been delivered to respondent No.1 to 4. During his cross-examination, PW2 Balwant Singh also admitted that front of the land sold by Kirpal Singh lies on Hoshiarpur road and the same is in possession of the vendees. On the other hand, the case of respondents No.1 to 4 is that Kirpal Singh was in possession of specific portion out of Khasra No.870, 489, 872, 490, 492, 491 and 357 and he delivered the specific portion of the area to them. Respondent No.3-Balram Singh stepped into the witness box as DW1 and also deposed to this effect. In the opinion of the court, once it is established on record that vide sale deed dated 31.12.2007 Ex.D1, respondent No.5 had sold specific share/portion out of Khasra No.870, 489, 872, 490, 492, 491 and 357 and delivered the possession of specific share/portion out of said khasra number to respondents No.1 to 4 and since the appellant and other plaintiffs have themselves admitted that respondents No.1 to 4 are in possession of the suit

property, the suit of the appellant for the relief of permanent injunction has been rightly dismissed by the courts below. Moreover, out of the cross-examination of the appellant as PW1, it is made out that the appellant himself sold a specific portion out of the suit land from his ownership situated at Hoshiarpur road and delivered the possession of 1 Kanal 13 Marlas to another vendee. In such circumstances, the appellant is not entitled to restrain his other co-sharer from delivering the specific portion of his share to his vendees, when the appellant himself has already done so. Counsel for the appellant has failed to point out any illegality in the findings returned by the courts below.

11. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

12. Dismissed.

December 11, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No