

RSA No.5255 of 2012 (O&M)

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

RSA No.5255 of 2012 (O&M)

Date of decision:25.01.2019

Manphool (now deceased) through LRs and others ... Appellant(s)

Vs.

Jai Singh and others ... Respondent(s)

RSA No.358 of 2013 (O&M)

Mohinder Singh and others ... Appellant(s)

Vs.

Jai Singh and others ... Respondent(s)

RSA No.528 of 2013 (O&M)

Manphool Singh (now deceased) through LRs and others ... Appellant(s)

Vs.

Jai Singh and others ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Dhruv Mittal, Advocate
for the appellants.

Mr. Rameshwar Singh Thakur, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.995-C of 2013 in RSA No.358 of 2013

C.M.No.1455-C of 2013 in RSA No.528 of 2013

The applications are allowed, subject to all just exceptions.

Legal representatives of Ram Dia as mentioned in the applications are

ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA Nos.5255 of 2012, 358 and 528 of 2013 (O&M)

This order of mine shall dispose of three Regular Second Appeals bearing Nos.5255 of 2012, 358 and 528 of 2013.

The dispute is amongst the successors-in-interest of Paras Ram and Hari Chand sons of Devtia. It was alleged that Devtia was the owner of land fully detailed in the plaint, 28 kanals 3 marlas which was construed to the ownership. He had two sons Parsa Ram and Hari Chand and one daughter Seona Devi. Widow and Seona Devi stated to have died intestate. LRs of Hari Chand and Parsa Ram, both filed the civil suits for injunction restraining each other from forcible interference and dispossession of the land alleged to be owner in their possession. Even the counter claim was also filed by the LRs of Hari Chand against Manphool and others, legal representatives of Paras Ram.

The trial Court declined to grant the counter claim by rejecting the plea of licensee with regard to killa no.124/1 measuring 1 kanal 10 marlas and partly decreed the suit bearing No.190 of 2009 titled as “Jai Singh and others vs. Manphool and others” restraining the defendants therein from dispossession of the suit land measuring 20 kanals 3 marlas, 6 kanals 12 marlas and in other civil suit bearing No.131 of 2006 titled as “Manphool Singh and others Vs. Hari Chand and others” granted the injunction with regard to rect. no.106, killa no.21, 22, 23/1 rect. no.107 killa no.25 rect. no.123 killa no.5/1/1, killa no.124/1(8-0).

The plaintiffs filed an appeal against partial allowing of the suit filed by Manphool Singh, i.e. 131 of 2006 whereas Manphool Singh and others have also filed the appeal against the decretal of suit bearing no.190 of 2009 and similarly, another civil appeal for rejection of counter claim by the defendants in civil suit no.131 of 2006.

The civil appeal of plaintiffs in civil suit no.131 of 2006 was dismissed and that of counter claimants was partly allowed. However, appeal of the defendants in civil suit no.190 has been partly allowed, whereby, Manphool Singh and others, LRs of Paras Ram were directed to hand over the possession of the entire land except land measuring 1 kanal 10 marlas.

Mr. Arun Jain, learned senior counsel assisted by Mr. Dhruv Mittal, Advocate appearing on behalf of the appellants submitted that the Lower Appellate Court has committed illegality and perversity in directing the appellants-Manphool Singh and others, sons of Parsa Ram to hand over the possession of land except killa no.124/1 measuring 1 kanal 10 marlas. Concededly, both the parties to the lis are co-sharers and there was already oral partition. Both the parties were in their respective possession and therefore, injunction suit was maintainable.

Per contra, Mr. Rameshwar Singh Thakur, learned counsel appearing on behalf of the respondents submitted that oral partition set up by the appellants is 'figment of imagination', for, there is no entry in the revenue record as his clients have been able to prove the exclusive possession with regard to land subject matter of suit bearing No.190 of

2009, being in exclusive possession injunction was inevitable. The appellants have sold some part of the land. Though the revenue record reflected the joint ownership but the possession was separate and therefore, order of the Lower Appellate ordering the possession is justified and thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below with their able assistance and of the view that following substantial questions of law arise for adjudication of the present appeals:-

- “1) Whether the parties to the lis in the revenue record reflected to be joint owner in the suit land, can the Lower Appellate Court in the absence of partition, order for possession of land except 1 kanal 10 marlas, if so, its effect?
2. Whether the co-sharers, if found in exclusive possession can seek the injunction being in exclusive possession?”

The plea of Manphool and others, plaintiffs in civil suit no.131 regarding oral partition has not been substantiated by any documentary evidence as the revenue record reflected the joint ownership because Devtia, father died intestate. In other words, there was no testamentary document. As per the provisions of Section 8 of Hindu Succession Act, both Parsa Ram and Hari Chand became co-owners to the extent of $\frac{1}{2}$ share of the entire land. They may be in possession of the respective land owing to some arrangement but it is yet to be ascertained whether the respective possession is of valuable or invaluable land which can always be adjudicated in case

the appropriate proceedings for partition are initiated.

The Lower Appellate Court, in my view, has completely abdicated while upholding the judgment and decree of the trial Court dismissing the counter claim in ordering the possession of entire land in favour of the plaintiffs except land measuring 1 kanal 10 marls. Khasra girdawari reflected the ownership of co-sharers i.e. descendants of Parsa Ram and Hari Chand. In my view, the most innocuous order would have been the status quo qua their possession existed at the time of filing of suit by relegating the parties to seek partition.

As an upshot of my findings, the questions of law aforementioned are answered hereinabove. The judgment and decree of the Lower Appellate Court directing the possession is hereby set aside and the appeals are disposed of in the following manner:-

- i) Parties to the lis are ordered to maintain the status quo with regard to their respective possession.
- ii) None of the parties shall create third party rights and shall not interference into each other's possession till the suit land is partitioned by metes and bounds.

(AMIT RAWAL)

JUDGE

January 25, 2019

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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No