

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

RSA No.1199 of 2013 (O&M)

Date of Decision: May 28, 2019

Ujagar Singh

.....Appellant

Versus

Ranjit Singh & Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ashish Gupta, Advocate for the Appellant.

Mr. H.S.Bhullar, Advocate for Respondent No.1.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Faridkot in Civil Appeal No.263 of 2011 dated 18.10.2012, vide which, the original Judgment & Decree passed by the Ld. Additional Civil Judge (Senior Division) Faridkot in Civil Suit No.RT 339 of 2008 dated 24.1.2011 in favour of the present Respondents/Plaintiffs were upheld.

2. The Suit had been filed by the Respondents seeking a Permanent Injunction to restrain the Appellant and his co-sharers (Proforma Respondent Nos.4 & 5) from dispossessing and interfering in the peaceful possession of the Plaintiffs of land measuring 32 Kanals 17 Marlas bearing Khasra Nos.1610/329 (Northern side) (6-15), 27 x 45 karams, 1609/329 (3-5) (Northern side) 13 x 45 karams, 328 Min (Northern side) (11-2), 40 x 50 karams and 327 Min (Northern side) (11-15), 47 x 45 karams (as per Site Plan prepared on

the photo state copy of the Aks Shajra, alongwith the Aks Shajra attached with the Complaint) as per Jamabandi for the year 2006-07, situated in the revenue estate of village Pehluwala, Tehsil and Distt. Faridkot, forcibly, illegally and without due course of law.

3. The Complaint case was that Nar Singh, father of Defendant No.2 was owner in possession of 16 Kanals 11 Marlas land. After his death, Defendant No.2 succeeded to his Estate and Mutation was sanctioned. Sukhchain Singh, Takhatraj Singh sons of Nar Singh son of Baltej Singh, Gurdial Kaur mother of and Parkash Kaur sister of Nar Singh, were also co-sharers in Khewat No.79. Khata was not partitioned. But the Patwari Halqa bifurcated Khewat No.79 in different Khewats including Khewat Nos.81 and 81/1. Above said co-sharers sold 13 Kanals 11 Marlas in favour of Darshan Singh and Ranjit Singh Plaintiffs. Thus, Plaintiffs have become co-sharers along with Karaj Singh son of Nar Singh in Khasra Nos.328 and 329. Baldev Singh Plaintiff No.3 is also in possession of 2 Kanals 1 Marla out of Khasra No.327 Min due to exchange. For the convenience of cultivation, Plaintiffs are in peaceful possession. Remaining portion on Southern side of Khasra Nos.327, 328 & 329 is in possession of Karaj Singh, Defendant No.2, but Defendant No.3 Ujagar Singh, is not in possession of any portion. Karaj Singh Defendant No.2 sold 11 Kanals 3 Marlas land out of Khasra No.329. Defendant No.1 after purchasing land from Defendant No.2 has started threatening to take possession of 11 Kanals 3 Marlas land, which was not in possession of said Karaj Singh.

4. The Suit was resisted on behalf of the present Appellant, who

contended that under the garb of Injunction Suit, the Plaintiffs were seeking declaration of Title, which is not permissible and that they were not in possession as claimed. Further according to the Defendant/Appellant, Nar Singh alongwith other co-sharers were owners of 16 Kanals 11 Marlas land alongwith other land. The land was partitioned, and the Patwari had rightly bifurcated Khewat Nos.81 and 81/1. Plaintiff No.3 is not in possession of 2 Kanals 1 Marla land out of Khasra No.327, and the Site Plan produced by Plaintiffs is wrong. The Appellant/Defendant claimed to be in possession of Khasra No.327 on the Southern side in the land measuring 7 Kanals 19 Marlas, and contended that the suit could not be filed by Plaintiffs jointly, as they had not come to Court with clean hands and the dispute regarding the partition of Khasra No.327 was pending in the High Court and as such the matter was subjudice regarding this Khasra Number.

5. The Ld. Trial court decreed the Suit in favour of the Respondents after observing that the Defendants Nos.1 and 2 (i.e. the present Proforma Respondents) had not appeared to contest while the Appellant/Defendant No.3 had contested the Claim only qua Khasra No.327. As such, the Plaintiffs' Claim against Defendants Nos.1 and 2 regarding Khasra Nos.328 & 329, being uncontroverted was liable to be decreed. Further according to the Ld. Trial Court, regarding Khasra No.327 also, the contesting Defendant/Appellant had admitted that the Plaintiffs/Respondents were occupying 10½ Kanals area of Khasra No.327 in its Northern portion, and also admitted their possession in respect of Khasra Nos.328 & 329 to the extent of 7

Kanals 11 Marlas and 9 Kanals 12 Marlas on the Northern side respectively. As such, the Suit was decreed in part in favour of the Respondents in view of the admissions made by the Appellant himself with a direction restraining the Defendants from interfering with the possession of the Plaintiffs, which is on the Northern portion of Khasra Nos.327, 328 and 329 to the extent of the specific area under their occupation.

6. The Appeal preferred against the Judgment of the Trial Court was dismissed by the Ld. ADJ Faridkot vide his impugned Judgment dated 18.10.2012, in which, the Ld. Lower Appellate Court noticed the own admissions of the Defendant/Appellant in his cross-examination to the extent that the Plaintiffs were occupying 10½ Kanals in the Northern portion of Khasra No.327, 9 Kanals 12 Marlas in Northern portion of Khasra No.328, and at least 9 Kanals in Northern portion of Khasra No.329.

7. This Court has also carefully gone through the available material on record. It is seen that in respect of the Plaintiffs' Claim of being in partial possession of three Khasra Numbers as mentioned in Para 8 of the original Plaint, was not denied by the Appellant in the corresponding Para of his Written Statement. In fact, he did not even advert to the Khasra Nos.328 & 329 in his aforesaid Written Statement, but only confined himself to the disputed Khasra No.327 by pleading -

“8. That para no.8 of the plaint is wrong and incorrect, hence denied. The site plan produced by the plaintiffs showing their possession is wrong. Answering defendant is in possession of khasra numbers 327 on the southern side in the land measuring 7 kanals 19 marlas. It is wrong that the answering defendant is not in possession

of any land. If the plaintiffs are challenging entries in the revenue record, then they should file suit for declaration for making correction in the revenue record and without seeking declaration, the present suit is not maintainable and is liable to be dismissed.”

8. Now it is seen from the admission made by him in his Written Statement as DW1, that the Appellant had specifically admitted that the Plaintiffs are owners of 20 Kanals of land, and that they are occupying 10½ Kanals in (Khasra No.327) (40 x 47) in the North and that the Northern arm is 40 Karams.

9. Since there is no dispute raised qua Khasra Nos.328 & 329 in the Appellant's Written Statement as already noted above, the Ld. Trial Court decreed the Suit in favour of the Respondents/Plaintiffs exactly to the extent of that much of the area, which was in their occupation as admitted by the Appellant in his cross-examination itself -

“Xxxxxx *Sr. Hari Singh Sekhon, Adv.*

Plaintiff, his brother and father are owners of 20 Kanals land. They are occupying 10½ Kanals in No.327 (40-47) in the north. Northern arm is 47. In Khasra No.329, plaintiffs are occupying around 9 -12 or 9 –2. Sukhchain Singh etc. are occupying 7 K – 11 M etc. Remaining is under plaintiff. Karaj Singh etc. are occupying at the spot 40 x 27 Karams in the south of No.329. Plaintiffs are occupying 9 Kanals 12 Marlas in northern of Khasra No.328. I cannot specify Karams herein. We are occupying the portion of Khasra No.327 & 329 only. There may be dispute between plaintiffs and defendants No.1 & 2. Defendant No.2 sold his portion to defendant No.1, with whom I am having no concern. It is wrong to suggest that I have deposed falsely.”

10. This Court therefore, finds no ground to interfere with the impugned Judgments of both the Ld. Courts below and is also in

agreement with the observation of the Ld. Lower Appellate Court that in view of the decision of Supreme Court in “**Tanusree Basu and Ors. Vs. Ishani Prasad Basu & Ors.**” 2008(3) CCC 001 (SC) that a co-owner in exclusive possession of a joint property is also entitled to an injunction. Consequently, if the Appellant still has any misgivings regarding the area occupied by the co-sharers in the disputed land, he always has the option of seeking a formal partition.

11. For the aforesaid reasons, this Court finds no substantive merit in the present Appeal, which is therefore, dismissed.

(SUDIP AHLUWALIA)
JUDGE

May 28, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |