

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4541-2013 (O&M)

Date of decision: 01.08.2019

Major Singh

...Appellant

Versus

Paramjit Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Achin Gupta, Advocate,
for the appellant.

Mr. D.S. Sidhu, Advocate, for
Mr. L.S.Sidhu, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been seeking to challenge the judgment and decree dated 11.04.2012 of the Court below whereby the suit of the plaintiff respondent for permanent injunction stands decreed which has subsequently been affirmed by the Lower Appellate Court

2. In brief, the facts are that the plaintiff-respondent (for short 'the respondent') filed a suit for permanent injunction for restraining the defendant-appellant (for short 'the appellant') for making any construction in property measuring 01 Kanal - 03 Marlas, bearing Khasra No. 1147/1-3, Khatauni No. 522, Khewat No. 250, situated in village Tehna, Tehsil and

District Faridkot. In fact, Malkit Singh, the original owner of the suit property died leaving behind the respondent Paramjit Singh, Tej Kaur, his widow, Nachhattar Singh and Gurlal Singh, two other sons and daughter Chhinderpal Kaur, who inherited the suit property in equal shares. Mutation No. 3446 was also sanctioned accordingly. Nachhattar Singh, the brother of the respondent, sold his share through a registered sale deed dated 03.02.2009 to the appellant herein. He sold a specific portion of the suit property which had some construction thereon. As the appellant started to raise construction, a suit was filed by the respondent seeking an injunction to restrain him from raising any construction without partition while also alleging that the sale deed was illegal and invalid.

3. On notice, the appellant-defendant appeared and filed the written statement taking the plea that the suit was liable to be dismissed and not maintainable while further contending that he had been put in possession by Nachhattar Singh and had become owner in exclusive possession of the portion described as 'A B C D' as shown in the site plan attached with the written statement. No replication was filed and thereafter issues were framed *“As to whether the respondent herein would be entitled for the relief of permanent injunction as prayed for?”* In support of his averments, the respondent stepped into the witness box as PW-2 and also examined Balour Singh, Draftsman as PW-1, whereas the appellant in order to rebut the evidence examined DW-1 Baldev Singh, DW-2 Jagsir Singh, DW-3 Nahar Singh and himself stepped into the witness box as DW-4. The Courts below held that the respondent would be entitled to the relief of injunction restraining the appellant from raising construction on any

specific portion of the suit property which order was upheld by the lower Appellate Court.

4. Learned counsel appearing on behalf of the appellant argues that in case a co-owner is in exclusive possession of certain portion of land and raises construction thereon, the same cannot be objected to by another co-owner and the remedy would be to file a suit for partition. In this regard he has placed reliance upon a judgment rendered by this Court in ***Jai Karan Sharma vs. Ram Kumar, 2009(1) R.C.R. (Civil) 546***, whereas learned counsel appearing on behalf of the respondent contends that Nachhattar Singh was not competent to deliver any specific portion of land to the appellant and, therefore, the appellant had no right to raise any construction on the suit property.

5. I have heard learned counsel for the parties, with their able assistance have gone through the pleadings of the case and the case law.

6. Admittedly, the appellant herein had been put in possession of the land by a sale deed Ex. P-1 executed by one of the co-owners, namely, one of the legal heirs of the original owner, namely, Malkit Singh, in which there is a recital that possession had been given with specific boundaries. By virtue of the sale deed, the appellant herein had been put in possession of a specific portion of the land which was jointly held by the legal heirs of the deceased Malkit Singh. There is a recital in the sale deed that the suit land had been partitioned. As per the recital in the sale deed, he had been put in possession at the time of execution of the sale deed on 03.02.2009 and the instant suit was filed thereafter. The sale deed has not been set aside by either of the Courts below and, therefore, the appellant herein becomes a

co-owner in the said property. The appellant had taken the specific plea in his written statement that he was in exclusive possession of the suit property which was not controverted by the respondent. Once in possession, only remedy for the respondent would have been to file a suit for partition other than a simplicitor suit for an injunction, as has been held in ***Jai Karan Sharma case (supra)*** by relying upon the judgment rendered in ***Bachan Singh vs. Swarn Singh, 2000(3) RCR (Civil) 70 : 2000(2) PLJ 143***, this Court has laid down the following principles as and when a co-owner can seek an injunction as against another co-owner and it has been laid down as under :-

“17. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

- (i) A co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.*
- (ii) Mere making of construction or improvement of, in the common property does not amount to ouster.*
- (iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.*
- (iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.*

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction

restraining the co-owner in possessino from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

7. Once the appellant has been put in exclusive possession of a specific portion by virtue of a sale deed executed by one of the co-owners, any suit for injunction would not lie and the remedy would be to file a suit for partition. Sale of land by a co-sharer of a properety which is in his exclusive possession is subject to adjustment at the time of partition. Raising a construction or improvement in the area purchased by him even though it is common property, it would not be detrimental to the interest of the respondent. Therefore, the findings of the Courts below are not sustainable and are set aside dismissing the suit of the plaintiff herein.

01.08.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.