

RSA-3483-2016 (O&M)

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

Date of decision : 26.02.2019

1. RSA-3483-2016 (O&M)
Dhauji ... Appellant

Versus

Chokh Ram and another
... Respondents

2. RSA-3753-2016 (O&M)
Chokh Ram ... Appellant

Versus

Mahesh Kumar and another
... Respondents

3. RSA-4504-2016 (O&M)
Dhauji ... Appellant

Versus

Puran Chand and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant in RSA-3753-2016.

Mr. Rakesh Dhiman, Advocate
for the appellant in RSA Nos.3483 & 4504 of 2016.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three regular second appeals, bearing RSA Nos.3483 & 3753 of 2016, arising out of the Civil Suit No.191 of 2006 titled as **“Chokh Ram V/s Mahesh Kumar and another”**, seeking declaration with consequential relief of permanent injunction, which has been dismissed by the trial Court, but the lower

RSA-3483-2016 (O&M)

Appellate Court partly decreed the suit by restraining the defendants, who were appellants in other regular second appeal, from raising construction as well as the other appeal bearing RSA No.4504 of 2016 is at the instance of the appellant-plaintiff-Dhauji, arising out of the Civil Suit No.658 of 2006 titled as **“Dauji V/s Puran Chand and others”** seeking permanent injunction, dismissed by the trial Court and affirmed in appeal.

The facts are being taken from RSA No.3483 of 2016 as common questions of law and facts are involved therein.

The point involved in the appeals is whether the suit property as per the revenue record, even if, it has exchanged by way of sale deeds assailed by the plaintiffs allegedly executed by defendant No.1, in favour of defendant No.2, pertaining to the respective shares of co-sharers, a declaration of exclusive ownership, in the absence of relief of partition or separate/joint possession, injunction can be granted. The answer would be 'No'.

The other point which arises for determination is whether when the parties to the suit land, even after purchase of the shares, can be permitted to raise the construction at his peril to the disadvantage of the affected parties. The answer is 'Yes'.

The plaintiff-Chokh Ram, sought the declaration by saying that the defendants did not acquire the valid title over the specific portion of the Killa No.11 of Rect. No.8, vide two sale deeds dated 30.03.2006 and 07.07.2006, purchased by defendant No.1 and then executed by defendant No.1 in favour of defendant No.2, with a consequential relief of injunction restraining the defendants from raising any sort of construction over the suit property and mandatory injunction directing the defendants, Mahesh Kumar

RSA-3483-2016 (O&M)

and Dhauji, to remove building material forcibly.

In the other suit, the plaintiff Dhauji sought the dispossession of the same very parcels of land from the joint possession.

The defendants opposed the suit and stated to have purchased the land by way of sale deeds, aforementioned, from the co-sharer Har Kishan.

It is a matter of record that the suit property was owned by two sets of co-owners i.e. Suraj Mal, Puran Chand, Chokh Ram, Sunder Lal, Smt. Ashrafi and Smt. Resham to the extent of 7/8th and Har Krishan, to the extent of 1/8th in the land measuring 22 kanals 14 marlas comprised in Rect. No.8/11 (8-0), Rect. No.17/14 (7-7) and 15 (7-7), as per jamabandi for the year 1998-99 (Ex.P1). None of the parties have been able to prove their exclusive possession over the suit property as their possession was shown to be joint. The grievance of the plaintiff qua declaration and injunction, though was declined by the trial Court, but in part, the suit has been decreed, injunction the defendants Mahesh Kumar and Dhauji from raising the construction and the other suit has also been dismissed as Dhauji failed to establish exclusive possession.

The law with regard to the injunction in a dispute amongst the co-sharer qua forcible interference and dispossession, in the absence of exclusive possession as well as restraining one of the co-sharer from raising construction, in the absence of partition, is no longer *res integra* in view of the *ratio decidendi* culled out by the Full Bench of this Court in **Bhartu Versus Ram Sarup, 1981 PLJ 204** and Division Bench in **Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70.**

The jamabandi placed on record has been proved, which carried

RSA-3483-2016 (O&M)

a presumption of truth. Injunction granted against defendants Mahesh Kumar and Dhauji from rasing construction would effect the plaintiff's right, for, as and when the partition proceedings are initiated, at the time of final partition, the party may not take the benefit of equity being in possession of the same. Both the parties unnecessarily laid the focus on injunction and declaration, instead of availing the remedy for partition, in accordance with law.

The sale deeds giving specific portion while mentioning the specific khasra numbers, once the character and nature of the property is joint, cannot confer exclusive possession and right of title, in favour of the vendee/transferee, thus, findings of the lower Appellate Court granting the innocuous injunction against the defendants, Dhauji and Mahesh Kumar, from raising the construction, cannot be erroneous. Every co-owner, even if not in possession, is the owner of each and every inch of land and in the absence of exclusive possession, in my view, in a suit filed by Dhauji, injunction has rightly been rejected.

In this view of the matter, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeals are dismissed.

26.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**