

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3438 of 2015 (O&M)
Date of decision : 13.5.2019

...

Jagga Ram

.....Appellant

vs.

Rattan Lal and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Y.K. Aneja, Advocate and
Mr. Suresh Kumar, Advocate for the appellant.

Ms. Kiranjeet Kaur, Advocate for respondent No.1

...

H. S. Madaan, J. (Oral)

Briefly stated, facts of the case are that plaintiff Rattan Lal had brought a suit against defendants Raj Kumar and Sarwan Kumar both sons of Moti Ram, as well as Jagga Ram son of Chaudhari Ram, seeking a decree for permanent injunction restraining such defendants from causing any type of forcible, illegal and unauthorized interference into peaceful possession of the plaintiff over the suit property measuring 6 $\frac{3}{4}$ marlas having dimensions 60' 30' fully

described in head note of the plaint. As per version of the plaintiff, he alongwith defendants are recorded to be co-sharers in the suit land detailed in the head note of the plaintiff situated at village Painchawali now Radha Swami Colony within Municipal Limits of Fazilka; that on account of oral family partition effected among the co-sharers, the plaintiff is in peaceful exclusive possession of the suit property measuring 6 $\frac{3}{4}$ marlas having dimensions 60' 30' consisting of five shops and courtyard from the portion of land measuring 8 kanals as co-sharer without any hindrance or interruption from anybody. That exclusive possession of the plaintiff over this piece of land is evident from entries incorporated in the revenue record; that the plaintiff had raised a loan of Rs.50,000/- from the Fazilka Central Co-op Bank Ltd., Grain Market, Fazilka, vide report dated 31.10.1996 recorded at Sr. No. 131 in the revenue record; that plaintiff and defendants No. 1 and 2 are real brothers whereas defendants No. 3 is associate of defendants No. 1 and 2. Although defendants are co-sharers in the land in question, they have no concern or connection either with the exclusive possession of the joint suit property, but even then they constituted an unlawful assembly with an ulterior motive to dispossess the plaintiff illegally and forcibly. Feeling aggrieved, the plaintiff brought the suit in question.

On notice, only defendants No. 2 and 3 put in appearance and filed separate written statements, whereas defendant No.1 did not appear despite service and was proceeded against ex parte. In the written statement filed by defendant No.2, he had taken up

preliminary objections that the site plan of the disputed property has not been prepared properly; that Smt. Sheela Devi, mother of defendant No.2, one of the co-sharer, has not been impleaded as party and the suit was not maintainable. On merits, the answering defendant denied that he has no concern with the suit land measuring 8 kanals comprised in Rectangle No.84, Khewat No.747, Khatoni No. 972. Refuting the remaining allegations, he prayed for dismissal of the suit.

In the written statement filed by respondent No.3 he has taken up preliminary objection that he is a bona fide purchaser for valuable consideration of the suit property having purchased 17' x 11' from defendant No.2 and Smt. Sheela Devi, mother of defendant No.2 through a registered sale deed dated 18.1.2005 and since then he is in possession thereof as owner; that he has got one electric motor installed in his name and no cause of action arose to the plaintiff to bring the suit and the suit is not maintainable. On merits, the answering defendant contended that the revenue entries in the name of plaintiff are also wrong; that answering respondent is a bona fide purchaser for valuable consideration from defendant No.2 and his mother vide registered sale deed. However, relationship between the parties is admitted. It is contended that answering defendant was in exclusive possession of the suit property and plaintiff have no right in the same.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to injunction as prayed for ?

OPP

2. Whether suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

In order to prove its case, plaintiff himself appeared as PW-2 and examined Ram Saroop as PW-1, Satish Wadhwa as PW-3 and Krishan Lal as PW-4. Thereafter the plaintiff closed his evidence.

Defendant No.2 himself appeared as DW-1 and examined Des Raj as DW-2.

After hearing learned counsel for the parties, the trial Court decided all the issues in favour of the plaintiff and against the defendants.

Vide judgment dated 12.5.2011, the suit of the plaintiff was decreed and defendants were restrained from forcibly dispossessing or interfering in the peaceful possession of the plaintiff over the suit property forcibly and illegally except in due course of law.

Defendant Jagga Ram felt aggrieved by the said judgment and decree passed by the trial Court and preferred an appeal to the Court of District Judge, Ferozepur, which was assigned to the Additional District Judge-III, Ferozepur. The said appeal was dismissed and the judgment and decree passed by the trial Court were upheld vide judgment and decree dated 21.11.2014.

The defendant again felt dissatisfied and has filed the present Regular Second Appeal, notice of which was given to the

respondents. However, only respondent No.1 – plaintiff has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court in its judgment has observed that in the jamabandi in the ownership column, name of the plaintiff as co-owner has been reflected and mutation of share of the plaintiff in the entire suit property measuring 8 kanals has also been sanctioned in favour of defendant No.3 in view of the sale deed executed by defendant No.2 and his mother Smt. Sheela Devi as Exhibit D-1. Though the exclusive possession of plaintiff on the basis of oral settlement is not shown to be there in the revenue record, nevertheless, plaintiff has been able to prove sanctioned site plan of the property measuring 30' x 60' adjoining the house of Sohan Lal and Surat Singh, in his name and entries in Exhibit PW 3/A are there, which are of 1987. The trial Court has further observed that there is nothing on record to show that defendant No.2 or Smt. Sheela Devi was/were in exclusive possession of the suit property measuring 30' x 60'. This is so described in head note of the plaint and even electricity bills Exhibit D-5 and Exhibit D-7 and receipt by Municipal Council are not connected with the suit property. Therefore, the plaintiff was entitled to protect his peaceful possession over the suit property and that defendant being a co-sharer can always apply for partition of the land to claim his possession as share out of the entire land. Ultimately, suit of the plaintiff had been decreed.

Learned Additional District Judge -III, Ferozepur, agreed

with the findings recorded by the trial Court and dismissed the appeal.

The Courts below on analysis of the evidence adduced by the parties had come to the conclusion that plaintiff has been in exclusive possession of the suit land, which was part of the joint khata, therefore, the defendant who also comes out to be a co-sharer in the joint khata, has remedy of suing for partition to get his share separated if so advised and till then he could not interfere in the possession of plaintiff illegally and forcibly, except in due course of law.

Learned counsel for the appellant – defendant has referred to authority *Nirmal Singh and others vs. Surjit Singh and others 2014 (4) Civil Court Cases 173 (P&H)*, by a Co-ordinate Bench of this Court, where in it was observed that in a suit for permanent injunction, filed by one co-sharer, against other co-sharer, seeking injunction to protect exclusive possession of portion of land, under the arrangement between co-sharers in absence of proof of the arrangement, the plaintiff could not claim exclusive possession in order to seek restraint order from the Court against the defendant, who is admittedly a co-sharer, is not applicable to the present case due to different facts and circumstances and the context in which such observations have been made.

No substantial question of law is found to be involved in this appeal.

The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence

and correct interpretation of law. There is no illegality or infirmity therein. Thus the appeal is found to be without any merit and the same stands dismissed.

13.5.2019
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No