

RSA-5848-2016 (O&M)

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

RSA-5848-2016 (O&M)

Date of decision : 27.05.2019

Rajesh and others

... Appellants

Versus

Gheesa deceased through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Mittal, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

Learned counsel for the appellants submitted that in the previous order dated 31.01.2019, the name of the counsel has wrongly been mentioned as Mr. Sachin Mittal, whereas it should have been Mr. Sanjay Mittal.

The mistake appears to be typographical and inadvertent. Accordingly, the name of the counsel i.e. Mr. Sachin Mittal, in the order dated 31.01.2019, be read as Mr. Sanjay Mittal. Office is directed to carry out necessary correction accordingly.

The appellants-plaintiffs have not been successful in claiming the declaration to be co-owner in possession of property bearing Khewat No.86/94, Khata No.90/102, Rect. No.17, Killa No.27 (2-9), *gair mumkin chah pukhta zari*, situated in the revenue estate of Village Asalwas, Tehsil and District Rewari, having share of 0-7 marlas, as per the site plan, with

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consequential relief of permanent injunction of forcible interference and dispossession.

The aforementioned declaration was claimed as per the sale deed dated 13.06.2008 and mutation No.779 dated 24.10.2008, but owing to the threat perception of defendant No.2, alleged to have purchased the property from other co-owner, the suit, aforementioned, was filed as there was complete denial to the title and possession.

The defendants opposed the suit by raising preliminary objection qua maintainability etc., but on merits, the identity of the property was disputed and had purchased the property, vide sale deed dated 13.06.2008 and had been in possession of the property by tethering the cattle.

The plaintiffs, in support of their case examined five witnesses and brought on record Ex.P1 to Ex.P19, whereas the defendants examined nine witnesses and brought on record many documents.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellants-plaintiffs submitted that as per the report of the Local Commissioner, the appellant/plaintiff Nos.1 and 2, Rajesh and Sushil, have been found in possession and tethering the cattle. The status of the defendants, assuming for argument sake that they had purchased the land vide sale deed dated 13.06.2008, would be of a co-sharer. The Local Commissioner, second time, visited on 20.02.2010. All these facts, if read in cumulative, it is a fit case for granting the injunction being exclusive possession.

It was also submitted that as per the instructions, the sale deed dated 13.06.2008 of defendant No.2 has been set aside in some other

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proceedings.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book as well as records of the Courts below and of the view that the remedy for the appellants-plaintiffs was to seek the partition. Leaving the statement regarding setting aside of the sale deed of the defendants, status of the co-owner deemed to be restored as the possession has been found to be of the plaintiff, but not exclusive. The remedy is to seek the possession by way of partition as well as the injunction, in accordance with law.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sanjay Mittal, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

27.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**