

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

**RSA No.4764 of 2015 (O&M)
Date of decision:18.01.2019**

Darshan Dheer and another ... Appellants

Vs.

Ashok Kumar and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anterpreet Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal at the instance of appellant-defendants is directed against the judgments and decrees of both the Courts below, particularly of the Lower Appellate Court.

Plaintiff-Ashok Kumar filed the suit for partition with regard to property of Joginder Pal bearing No.1194/9 having another no.1194/1 situated at Gali Gujran, Chowk Baba Sahib, Amritsar and injunction restraining the defendants from transferring, alienation, damage, demolition, and dispossession except in due course of law from one room at the rear portion of the first floor alongwith kitchen from creating any hindrance and obstruction on the premise that Joginder Pal died intestate and therefore, parties to the lis being siblings and children of Joginder Pal had 1/4th share in the property.

The defendants opposed the suit and admitted that father died intestate, thus, ownership of the suit property was disputed as litigation regarding the same is pending adjudication in this Court. It was alleged that plaintiff had been residing with his family in house bearing No.1143 Gali Gujjaran Chowk Baba Sahib, Amritsar.

On preponderance of the evidence, the trial Court rendered the finding on issue no.1 against the plaintiff holding that since dispute qua title is pending, did not accord the separate possession but enjoined the defendants in tandem with the relief as sought.

Both the parties have filed the appeal and cross objections. The cross objections of the plaintiff have been allowed and in such circumstances, the present appeal at the instance of the defendants has been filed.

Learned counsel appearing on behalf of the appellant-defendants submitted that once the title of Joginder Pal has not been established, the decree of separate possession could not have been passed as under the garb of the same, the plaintiff is threatening to sell the share. He was in possession of one room but would not be having $\frac{1}{4}$ share. It is un-partitionable land.

I am afraid the aforementioned arguments are not sustainable, for, even if the title has not been proved, possessory rights of Joginder Pal in the suit property have not been denied by the parties to the lis. The parties had been litigating since long, who are none else but brothers and sister.

The Lower Appellate Court, in my view, has rightly accorded the separate possession by specifically emphasizing the preliminary decree could not confer title or ownership and maintain injunction granted by the trial Court.

The arguments of Mr. Anterpreet Singh have not been able to bring the case within the realm of illegality and perversity to form the different opinion than the one arrived at by the Lower Appellate Court.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 18, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No