

In the High Court for the States of Punjab and Haryana at Chandigarh

RSA-6198-2016 (O&M)
Date of Decision: March 19, 2019

Randhir Singh

... Appellant

Versus

Balwinder Kaur

... Respondent

CORAM: HON'BLE MR. JUTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate,
for the appellant.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff claiming two-fold relief of forcible interference of the dis-possession and restraint of alienation, has been dismissed by the trial Court and affirmed in appeal.

Plaintiff asserted his right to the extent of 1/4th share in the suit property on the basis of transfer deed dated 22.07.2004 executed by Ajit Singh and reflecting his name in the mutation and jamabandi for the year 2006-07. The defendant had threatened to interfere and alienate the suit property.

Defendant appeared and opposed the suit by stating that by virtue of decree dated 02.06.2012 according the status of co-owner to the extent of 1/4th and have further sold the property to two persons, namely, Mohinder Kaur and Surjit Kaur. Both the parties led their evidence in support of their respective pleadings.

Mr. Sarju Puri, learned counsel, appearing on behalf of the appellant, submitted that the Court did not grant the injunction qua

alienation as the defendant sold the share to the aforementioned person during the pendency of the suit, but the jamabandi reflected the exclusive possession. In such circumstances ought to have enjoined the defendant qua the alienation much less dispossession.

I am afraid the afore-mentioned submission of the learned counsel for the appellant is not sustainable as the *ex parte* decree dated 02.06.2012 conferred 1/4th ownership upon the defendant and by sale deed third party rights had been created but subsequent transferees were not impleaded as a party. Mutation on the basis of judgment and decree was also sanctioned in favour of the defendant. Plaintiff miserably failed to place on record any evidence with regard to the exclusive possession, for, during the subsistence of the *ex parte* decree, though the application under Order IX Rule 13 CPC stated to be pending without apprising its result. The status of the parties to lis are of the co-sharer. It is settled law that if a person found to be the subsequent vendee, has not been impleaded as a party, no injunction can be granted.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

March 19, 2019
vkd

(Amit Rawal)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No