

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

**RSA No.6518 of 2016 (O&M)
Date of Decision.14.01.2019**

Munish Khanna and another ...Appellants

Vs

Sushil Kumar and another ...Respondents

2. RSA No.6519 of 2016 (O&M)

Munish Khanna and another ...Appellants

Vs

Krishan Kumar and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Udit Garg, Advocate and
Mr. Mohinder S. Nain, Advocate
for the appellants.

Mr. Vikas Bahl, Senior Advocate with
Mr. Narinder Kumar Vadehra, Advocate
for the respondents.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second appeals preferred by the defendants arising out of Civil Suits bearing No.66 and 76 of 2004 filed by the plaintiffs against the defendants for permanent injunction qua forcible interference and possession where different plaintiffs had sought injunction against common defendants with regard to plot No.77 measuring 287-7/9 sq. yards and plot No.78, measuring 287-7/9 sq. yards comprised of Khata No.13/34, Khasra No.29///21/1, 21/2, 32//1, 10, Hadbast No.151 situated at village Partap Singh Wala, Tehsil and District, Ludhiana on the premise that they had purchased the same from Smt. Nirdosh Jain for

its valuable sale consideration vide registered sale deed dated 26.02.2002 and 02.04.2002. Since then they had been in peaceful possession of the same without any sort of interruption and hindrance, defendants had no concern with the suit property and when a week back attempted to interfere in their peaceful possession, cause of action accrued to file the suit.

Defendants contested the suit and denied plaintiffs to be joint owners in possession of the suit property bearing plot No.77 and 78 measuring 287-7/9 sq. yards. It was averred that in view of the dispute, Nahar Singh, retired Kanungo had already conducted a demarcation dated 20.03.2004 and as his report, it was found that property in dispute fell in Rect. No.29, Killa No.23 measuring 583 sq. yards belonging to the defendants, which have been purchased vide two sale deeds bearing No.14049 and 14050 dated 16.10.1991. Existence of plots No.77,76 and 78 was denied.

Since the parties were at variance, the trial Court framed the following issues in Civil Suit No.66 of 2004:-

- “1. Whether the plaintiff is entitled for permanent injunction as prayed? OPP*
- 2. Whether plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether plaintiff has suppressed the material facts from the court? OPD*
- 4. Relief.”*

In Civil Suit No.76 of 2004, framed the following issues:-

- “1. Whether the plaintiffs are entitled for permanent*

injunction as alleged? OPP

2. *Whether plaintiffs have no locus standi to file the present suit? OPD*

3. *Whether suit of plaintiff is an abuse of process of the court? OPD*

4. *Whether plaintiffs are guilty of suppression of facts from the court? OPD*

5. *Whether plaintiffs are stopped by their act and conduct from filing the present suit? OPD*

6. *Relief.”*

In the civil suit bearing No.66 of 2004, plaintiff No.1 examined himself as PW1, plaintiff No.3 as PW2, Krishan Kumar as PW3, Bhupinder Singh as PW4, Tejinder Pal Singh as PW5, Nand Lal Gupta as PW6, Pritpal Singh (retd. Naib Tehsildar as PW7 and various other witnesses and in civil suit bearing No.76, examined five witnesses including Tejinder Pal Singh as PW5 and Nand Lal Gupta as PW4 and tendered numerous documentary evidence including demarcation report Ex.PW7/1 and the sale deeds by which they acquired the ownership whereas the defendants examined Munish Khanna as DW1 and brought on record documents Ex.D1 to D10.

The trial Court on the basis of aforementioned evidence, decreed the suit and the appeal laid before the lower Appellate Court were also dismissed.

Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Udit Garg and Mr. Mohinder S. Nain, Advocate appearing on behalf of learned counsel appearing for the appellants-defendants in

support of the memorandum of appeals raised following submissions:-

(i) Since the title of the plaintiffs was under cloud, suit for permanent injunction in the absence of declaration was not maintainable. In support of the aforementioned contention, relied upon ratio decidendi culled out by Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and others 2008(2) RCR (Civil) 879; 2008 AIR (SC) 2033.**

(ii) The demarcation report dated 20.03.2004 Ex.D10 has erroneously been discarded by the Courts below in the absence of the examination of Nahar Singh. The lower Appellate Court has abdicated in not referring to the khasra numbers but only plot numbers have been written, therefore, there is illegality and perversity.

(iii) PW-7, revenue expert in cross-examination admitted that he did not demarcate the khasra numbers subject matter of the sale deeds of the respondents-plaintiffs. It case there was a dispute amongst two demarcation reports, duty was cast upon the Courts below to get the property demarcated. In support of aforementioned contention, relied upon the judgments rendered by the Court of Himachal Pradesh High Court in **Sanjeev Kumar Sood and others Vs. Atma Ram and another 2005(3) SimLC 322.**

(iv) The factum of khasra numbers was admitted by the

plaintiffs in the application submitted for demarcation.

All the khasra numbers were existing in different sides and had no connection with the land in dispute, as the khasra numbers of the defendants, subject matter of the sale deeds, are as under:-

Khasra No.29=21/1, 21/2

Khasra No.32=1,10

Whereas plaintiffs khasra numbers are as under:-

Khasra No.23=18/1, 23/2

Khasra No.29=3/2, 8/1, 13/2, 18/1, 23

Khasra No.32=3, 8

Khasra numbers of Plot No.91, 71, 30-A, 31 and 26 are Ex.PW10/1, PW9/5, PW6/1, PW10/4 and Ex.PW4/1 respectively. All were out of the bigger area out of which defendants have purchased the property measuring 11 marlas each. The sale deeds of plaintiffs include khasra number of the defendants as per Ex.D1 to D4. The identity of the plots was in dispute. The Courts below ought not to have granted the injunction. Plaintiffs did not choose to file any replication to the specific averments in the written statement.

(v) The lower Appellate Court was enjoined upon an obligation to refer to each and every document, much less, the cross-examination and examination of the witnesses but it failed to notice that plaintiff in cross-examination admitted that it was a vacant plot whereas

contents of the sale deeds reflected construction of one room. The decision of the court below was not, thus, in accordance with documentary evidence. The lower Appellate Court misread contents of the written statement by holding that defendants had not denied title whereas there was emphatic denial.

(vi) Jamabandi Ex.P10 reflected that vendors of the plaintiffs had unpartitioned 1/4th share and therefore, suit property was sold out of unpartitioned land. In such circumstances, suit simplicitor was liable to be dismissed.

(vii) Ex.D10 was emphatically denied by the plaintiffs, which is evident from the application submitted to the Tehsildar for demarcation of land, resulting into demarcation report Ex.PW7/1. Once the report has not been disbelieved, non-examination of the Kanungo would pale into insignificance. Both the Courts below failed to take into consideration that revenue record produced by the plaintiffs reflected their ownership to the extent of 19/912 share. It is settled law that each co-sharer is owner in possession of every portion of the land and appropriate remedy was to get the property partitioned from competent court in accordance with law.

Per contra, Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Narinder Kumar Vadehra, learned counsel appearing on behalf of the respondents-plaintiffs supported the judgments and

decrees under challenge and drawn attention of the Court to the sale deeds Ex.D1 and D4 dated 16.10.1991 from the records of Courts below to reflect that even defendants were handed over possession of the portion of which their vendors had a specific share, which was unpartitioned land. This fact has been proved from the jamabandi. In such circumstances, the defendants could not stake claim with regard to specific number of the plots, which have been purchased by the plaintiffs from the erstwhile owner namely Nirdosh Jain, who purchased the land from Sanjay Kumar, which is reflected from sale deeds of 1989 Ex.PW10/3, Mark F dated 28.01.1989 etc.

PW4 Bhupinder Singh has been examined and as per sale deed Ex.PW4/1, it has been proved that he is in possession of plot No.76 and it is closer to the plot of the plaintiffs. PW5 Tajinder Pal Singh in his testimony brought on record sale deed regarding plot No.181 Ex.PW5/1. Similarly Nand Lal Gupta with regard to plot No.30 and brought sale deed Ex.PW6/1. The defendants examined only Munish Khanna and did not prove documents except tendering the same and therefore, the documents were not admissible. The demarcation report even if disbelieved, could not have been looked into as mere exhibition of the documents does not dispense with proof. Plaintiffs have been denied the right to cross-examine Nahar Singh. It was obligatory upon the defendants to examine him as Nahar Singh was not appointed through the intervention of the Court, thus, sub-rule 2 of Rule 10 of Order 26 CPC would not be applicable. However, report of the local commissioner Mr. Bikram Singh Sidhu, Advocate, District Court appointed by the Court has gone unrebutted

and uncontroverted in the absence of any cross-examination to confirm that foundation wall of the front wall towards the street is upto the height of 1 ½ feet. Some bricks were also lying in the said plot and the adjoining plot No.78 and northern-western sides of plot No.77 were surrounded by the walls of adjoining house of neighbourers. The concurrent finding of fact and law cannot be interfered with unless and until there is gross illegality and perversity, which defendants have failed to point out.

In support of the aforementioned submissions, relied upon following case laws:-

- (i) **Joginder Singh and others Vs. Dalip Singh and others 2018 (2) Law Herald 994** to contend that co-sharer cannot seek injunction against another co-sharer but injunction can be granted if one of them is in exclusive possession.
- (ii) Five Bench judgment of this Court in **Ram Chander Vs. Bhim Singh and others 2008 (3) RCR (Civil) 685** wherein while interpreting provisions of Section 44 of the Transfer of Property Act, joint property was explained to be a property held in common by two or more persons, whatever be its nature or origin and therefore, joint owner would be owner of specific share in the entire joint property but would not be entitled to claim separate ownership of any specified and particular portion of the joint property till such

time, as the property remains joint. Meaning thereby, separate possession can be obtained only in partition proceedings. A joint co-owner has an inherent right to alienate the joint property, limited to the extent and nature of his share holding.

Mr. Mittal, in rebuttal relied upon Annexure A-1 and A-2, *aksh sijra* and site plan of the plots sought to place on record by way of additional evidence to establish that khasra numbers are on the left side and not on the right side for which injunction was sought and therefore, identity of the property was in dispute, thus, urges this Court allowing the same as it is essential and necessary for adjudication of the lis.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below as well as judgments cited at bar and of the view that there is no force and merit in the submissions of Mr. Mittal, for, the sale deeds Ex.D1 and D4, which are read out during the course of hearing, reveals that vendors of the defendants had an unpartitioned share and even possession was not handed over.

Per contra, sale deeds of the plaintiffs Ex.P1 and P3 were in tandem with the site plan Ex.P2 and P4 of the vendor Nirdosh Jain, who had purchased the property from Sanjay Kumar.

Report of the local commissioner, Bikram Singh Sidhu had gone un rebutted wherein he admitted that there was a front wall towards the street of 1 ½ feet and bricks were lying in plot No.77 and 78 and existence of plot No.78 was also evident from Ex.P5 i.e. sale deed with regard to Plot No.79. Even the plot was in existence in the

sale deeds of 1989 as indicated above.

Since the defendants had purchased unspecified share from the co-sharer, could not stake claim by causing an interference into the plaintiffs property, whose plot number along with khasra numbers was mentioned. It appears that Khasra No.29 is of bigger area and remedy for the defendants was not for handing over possession but as per contents of the sale deeds was to seek partition whereas plaintiffs, in my view, have been able to establish the possession through testimony of PW4, PW5, PW6 and as well as the report of the local commissioner. The demarcation report Ex.PW7/1 also established possession of the plaintiffs. Even if the defendants had raised issue of title, it was not obligatory upon the plaintiffs to seek declaration as the title according to the terms and conditions of the sale deed was perfect.

A person may lie but the document cannot. Ex.D1 and D4 reveal that defendants were not handed over possession as purchased some unpartitioned share of the vendors. It is settled law that if a person purchases a share, his status is of a co-sharer. Ex.D10, in the examination of Nahar Singh has rightly been discarded. If at all, the defendants were aggrieved of the ownership and title of the plaintiffs, they could have challenged the sale deeds either in independent suit or by setting up a counter claim. Be that as it may, DW1 Munish Khanna admitted that his sale deed did not have any site plan or there was no site plan of the plot. He was not even present when the sale deed was executed. He further admitted that in the jamabandi, Vimal Khanna was reflected owner to the extent of

14/816 share and he to the extent of 11/816 share nor able to place on record any bill pertaining to construction. In such circumstances, even if status of the plaintiffs was for the sake of argument though not admitted is for khasra No.29 being a co-sharer but have been found to be in exclusive possession, injunction granted by Courts below was in accordance with law i.e. parameters laid down by Full Bench of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204** and reiterated by Division Bench of this Court in **Bachan Singh Vs. Swaran Singh 2000 (3) RCR Civil 70.**

For the facts noticed above reveal that defendants miserably failed to prove the specified share in joint possession or ownership regarding khasra No.29 vis-à-vis exclusive possession of the plaintiffs. In 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, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

January 14, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No