

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

RSA-2994-2014(O&M)

Date of decision:-16.9.2019

Sumer Singh (deceased) through his LRs and another

...Appellants

Versus

Raj Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Samarath Sagar, Advocate
for the appellants.

Mr.Birender Singh Rana, Senior Advocate with
Mr.Nishant Chauhan, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Sumer Singh and Sajjan Singh sons of Sh.Bharat Singh son of Sh.Hira Singh, residents of village Mirpur, Tehsil & District Rewari had brought a suit against defendants Raj Singh and six others arraying Koshalya Devi and six others as proforma defendants.

As per version of the plaintiffs, they along with proforma defendants are joint owners in possession of the suit land situated at village Janti, Tehsil and District Rewari; earlier the said land was mortgaged by Bharat Singh, father of the plaintiffs and proforma defendants with Chanderpal son of Sh.Lakhpat Singh vide document No.1628; on an application having been filed by the plaintiffs against Chanderpal Singh dated 14.6.1985 before Assistant Collector Ist Grade, Rewari, which was decided on 31.10.1985 possession was given to the plaintiffs vide report No.248 dated 15.1.1987 in the roznamcha; the land in dispute was not partitioned between the parties either orally or through intervention of revenue authority, in that way, the plaintiffs and proforma defendants are owners in possession of every inch of the suit property; defendants No.1 to 7 being clever persons wanted to raise construction on valuable portion of the suit land and to change its nature without getting the land partitioned; they also wanted to oust the plaintiffs and proforma defendants from the valuable portion of the suit land, as such defendants No.1 to 7 started digging out the land for construction and they also collected construction material for building and road, to which they had no right. Feeling aggrieved the plaintiffs had brought the suit in question praying that the defendants No.1 to 7 be restrained from raising any paca construction or digging out the land without partition of the suit property.

On getting notice, defendant No.2 appeared and filed written statement contesting the suit, raising various legal objections with regard to maintainability of the suit; principle of estoppel coming in way of plaintiffs in bringing the suit; suit being bad for non-joinder of necessary parties; the plaintiffs having concealed material facts. On merits, the answering defendant contended that the plaintiffs and proforma defendants are co-sharers to the extent of only 1/8th share in all three khewats and their recorded shares come to 6 kanals and 14 marlas in the entire suit land, whereas the remaining land was owned by only defendant No.2 – Surender Singh, which stood transferred to Dr.S.S. Yadav, Ram Bhagwan Charitable Trust, Mirpur; defendants No.1, 3 to 7 had already relinquished their rights to defendant No.2; the possession of the suit property has not been joint between the parties for a long time and the entry of joint possession in column No.5 of cultivation is wrong and incorrect; the plaintiffs and proforma defendants are in exclusive possession of northern part of rectangle No.25, kila No.18 measuring about one acre shown by violet colour in the site plan attached with the written statement; that the trust had raised boundary walls about 7 to 10 feet high and constructed huge buildings installing valuable machinery etc. after spending a lot of money; that the plaintiffs and proforma defendants were using the land part of kila No.18 by sowing crops and the level of this land is 7 feet lower than the remaining portion of

the suit land on, which the abovesaid hospital is being run since 27.6.1999; that the hospital is being run on 'no profit no loss' basis and it has been developed for the benefit and in the interest of general public; that the entire construction had been raised with the consent of the plaintiffs, proforma defendants and Smt.Krishna Devi; that the boundary walls, huge buildings, roads and parks had been constructed in the land shown by red boundary and work started in May, 1997 and at that time the plaintiffs and proforma defendants did not raise any objection; that the present suit had been filed out of greed and the main intention of the plaintiffs is to create hurdles in the development and running of charitable hospital so that they may be able to get exorbitant money for the land in their possession; that the land in possession of plaintiffs and proforma defendants is more than their share and is equally valuable and they are using the northern portion of kila No.25/18 peacefully as usual since long; that the plaintiffs and proforma defendants never used or cultivated the remaining other portion of the suit land, therefore, the plaintiffs have no locus standi to file the present suit and the suit was not maintainable. Refuting the remaining allegations, the answering defendant prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession over the suit land at village Moja Jati? OPP.
2. Whether the plaintiff is entitled for injunction restraining defendants from raising construction in the suit property no partitioned? OPP.
3. Whether the suit is not maintainable? OPP.
4. Relief.

In order to prove their case, the plaintiff No.1 Sumer Singh got recorded his statement as PW4 besides examining Sh.Vedbhushan, Draughtsman as PW1, Sh.Raj Kumar, Photographer as PW2 and Smt.Alka Sharma, Advocate as PW3.

On the other hand, the defendants had examined S.Ashok Kumar @ Billu, Ex-Sarpanch as DW1, Sh.Om Parkash, Draughtsman as DW2, Sh.Sher Singh as DW3, Sh.Ashok Kumar, Photographer as DW4, Sh.Manoj Kumar, Photographer as DW5, Sh.Ram Kishan as DW6, Sh.Surenderchand Aggarwal, Draughtsman as DW7, Sh.Kanwar Singh, Ex-Sarpanch as DW8, Sh.Madan Lal as DW9, HC Satyaan as DW10, Sh.Sushil Kumar as DW11 and Dr.S.S. Yadav as DW12.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiffs. This was so done vide judgment and decree dated 19.8.2011.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 21.2.2014 dismissed the same.

Still dissatisfied with the judgments and decrees passed by the Courts below, the plaintiffs have knocked at the door of this Court by way of filing this regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by them be decreed.

Notice of the appeal was issued to the respondents and respondent No.2 has appeared through counsel.

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

A perusal of the judgment passed by the trial Court goes to show that such Court on appreciation of the factual as well as judicial position, has come to the conclusion that, as per case of the plaintiffs themselves, they along with proforma defendants are joint owners in possession of the suit property, which fact is not denied by defendants, rather they have come up with a plea that defendants are joint owners upto the extent of 1/8th share of the suit property, which fact is corroborated by the revenue record i.e. jamabandi for the year 2005-06 Ex.D5. The trial Court has observed that plaintiff appearing as PW4 in his cross-examination has admitted that he is cultivating

specific khasra number and their share is to the extent of 6 kanals 14 marlas, thus it comes out that plaintiffs and proforma defendants are in possession of specific khasra number i.e. killa No.18 rectangle No.25, whereas defendants are in possession of remaining land for years. This fact was admitted by PW6 also. The trial Court has drawn the conclusion that the defendants are not in cultivating possession of the disputed land, rather such land is in possession of the plaintiffs; that the plaintiffs had an equal efficacious remedy asking for partition and since plaintiffs have not done so, their suit is barred under Section 41(H) of Specific Relief Act and the plaintiffs are not entitled to get injunction on this ground. Furthermore the plea raised by the plaintiffs that at the time of filing of the suit, the defendants had started construction over some portion of the land comprised in rectangle No.25 of kila No.18 and in report of Local Commissioner Ex.PW3/B, it is also so mentioned. It has further been noticed that plaintiffs initially denied construction over any portion of the suit property and it has also come on record that defendants started construction since 1997, which fact was well within the knowledge of plaintiffs and proforma defendants and if they had any objection then they could seek partition or file any other case immediately and plaintiffs had filed a suit after lapse of more than six years, which act and conduct of the plaintiffs and proforma defendants show that they had every knowledge regarding the construction and plaintiffs were

in exclusive possession of the property on which they had already raised construction. It is established on record that defendants have constructed a hospital, which is a huge building and cannot be raised in a day.

When the judgment and decree passed by the trial Court were challenged in the appeal, the First Appellate Court did not find itself in disagreement with the trial Court and rather it affirmed the judgment and decree passed by the trial Court. I find that the judgment recorded by the courts below are detailed and well reasoned based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court while hearing second appeal.

Learned counsel for the appellant has referred to judgment **Tanusree Basu and others Versus Ishani Prasad Basu and others (2008) 4 Supreme Court Cases 791**. But this judgment does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Learned counsel for the respondent No.2 has also referred to authorities i.e. **Amar Nath Versus Dr. Tejinder Singh and others, 2010(4) RCR(Civil)749**, **Jai Karan Sharma Versus Ram Kumar, 2009(1) RCR(Civil)546** and **Bachan Singh Versus Swaran**

Singh, 2000(3) RCR(Civil) 70.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

16.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No