

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

**RSA No.3474 of 2014 (O&M)
Date of decision: 19.07.2019**

Manphool

.....Appellant

Versus

Bhagwana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Bhardwaj, Advocate,
for the appellant.

Mr. A.K. Goel, Advocate,
for the respondents.

Ritu Bahri, J.

CM No.8052-8053-C of 2014

For the reasons mentioned in the application, same is allowed and delay of 20 days in filing and 54 days in re-filing of the appeal is condoned.

RSA No.3474 of 2014 (O&M)

This appeal has been filed against the judgment dated 01.08.2013 passed by the District Judge, Bhiwani, whereby appeal filed by defendants-respondents against the judgment and decree dated 07.01.2011 passed by the Civil Judge (Junior Division), Bhiwani, has been accepted and suit of plaintiff-appellant has been dismissed.

Manphool-plaintiff (appellant herein) (hereinafter referred to as 'the plaintiff') filed a suit for permanent injunction against the defendants to the effect that suit property measuring 20 Kanals 06 Marlas was being cultivated by him along with Lal Chand son of Khayali in joint tenancy.

Defendant No.1-Bhagwana is the real brother of said Lal Chand and defendant Nos. 2 and 3 are his nephews. Now, defendants being head strong persons, were threatening to dispossess the plaintiff from the suit property measuring 10 Kanals 03 Marlas, illegally and forcibly. Hence, the suit.

Upon notice, defendants (respondents) filed joint written statement taking preliminary objections with regard to maintainability of the suit etc. On merits, it was submitted that defendant No.1 along with Lal Chand had been joint tenants of the suit land for the last many years and the plaintiff had an evil eye to grab the said land. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to permanent injunction against the defendant son the ground as prayed for? OPP
2. Whether the Civil Court has no jurisdiction to try and decide the present suit? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit by observing that even if, plaintiff purchased land measuring 06 Kanals, then also he shall continue to remain as a tenant over the remaining land. In the sale deed Ex.D2, vide which, defendants had purchased land measuring 14 Kanals 06 Marlas, it had been recited that symbolic possession of the land had been delivered to the vendees and they (vendee) would be responsible for taking actual physical possession from the tenants

possession over 10 Kanals 03 Marlas of land. Ultimately, the suit was decreed and the defendants were restrained from causing any interference into peaceful possession of the plaintiff over the suit land to the extent of one-half (1/2) share.

However, on appeal, findings returned by the trial Court, have been reversed by the lower appellate Court. It was held that as per sale deed executed in favour of plaintiff, he purchased 06 Kanals of land out of the suit land and the remaining land has been purchased by the defendants in the name of women of their family. Sale deed in favour of the plaintiff was executed on 17.07.2008. After the purchase, tenancy rights had merged in the bigger right of ownership. As per statement made by plaintiff-Manphool (PW-1), he had relinquished his right in favour of defendant No.1 to the extent of 4 Kanals 03 Marlas. It has been further observed that defendants had purchased 14 Kanals 06 Marlas of land as per sale deed dated 03.06.2008 Ex.D2. After purchase of land, even correction in Khasra Girdawari was made vide order dated 26.05.2009 Ex.D3/A passed by Assistant Collector, IInd Grade. Against this order, plaintiff filed an appeal before the Collector. During the pendency of application for correction of Girdawari before the Assistant Collector, IInd Grade, plaintiff had given an affidavit Ex.D1 in favour of defendant No.1 that he had been continuing as *gair marusi* to the extent of ½ share in the girdawari pertaining to the suit land measuring 20 Kanals 06 Marlas and he had no objection, if, girdawari to the extent of 04 Kanals 03 Marlas, out of his share is corrected in favour of Bhagwana son of Khyali Ram. Keeping in view the fact that both the plaintiff and defendants had purchased 14 Kanals 06 Marlas of land, they were held to be in possession thereof being co-sharers. In view of the said

fact, it was observed that plaintiff could not claim any injunction against the defendants. Accordingly, appeal filed by the defendants was allowed and suit of the plaintiff was dismissed.

After going through the impugned judgment, this Court is of the view that since plaintiff and defendants have purchased land as per respective sale deeds executed in their favour, they have become co-sharers in the joint land. Therefore, no injunction can be granted against another co-sharer. Hence, suit filed by the plaintiff-appellant has been rightly dismissed by both the lower appellate Court vide impugned judgment dated 01.08.2013. No illegality, much less perversity, has been found in the impugned judgment warranting interference by this Court. Evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

19.07.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No