

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

RSA No. 152 of 2018(O&M)

Date of decision: 27.5.2019

Ravtaj Kaur and othersAppellants

VERSUS

Harupkar SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Mahal, Advocate for the appellants.

REKHA MITTAL, J.

CM No.17873-C of 2018

Heard.

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record subject to just exceptions.

Disposed of accordingly.

CM No.6217-C of 2019

Heard.

Allowed as prayed for.

Annexures A-3 to A-6 are taken on record subject to just exceptions.

Disposed of accordingly.

RSA No.152 of 2018

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent

injunction restraining the appellants/defendants from interfering in peaceful possession of the respondent/plaintiff or dispossessing him from land measuring 109 kanal 13 marlas situated in village Takapur, Tehsil Baba Bakala, District Amritsar, detailed in head-note of the plaint, was decreed by the trial Court vide judgment and decree dated 19.03.2015 and appeal preferred by unsuccessful defendants/appellants was dismissed by the Additional District Judge, Amritsar.

Harupkar Singh – plaintiff staked claim qua possession over suit land being one of the co-sharers along with Balbir Kaur and others with the allegation that khasra girdawari of land measuring 92 kanal 7 marlas is in his name and 17 kanal 6 marlas in the name of Avtar Singh, his father (since deceased). The appellants/defendants pleaded that they have purchased share of Balbir Kaur from joint khata but Balbir Kaur was not in possession of land in dispute and she is recorded only a co-sharer in the revenue record. A co-sharer can transfer his undivided share but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds.

The appellants/defendants filed the written statement raising preliminary objections qua non-maintainability of suit; locus standi to file the suit and suit being bad for non-joinder and misjoinder of parties. On merits, it is submitted that the respondent is residing in England (U.K.) for the past many years and he has never been in possession of the suit land. Amarjit Kaur widow of Avtar Singh and mother of plaintiff is also residing in England (U.K.) and she was never in possession of suit land. Balbir Kaur daughter of Ujagar Singh was co-sharer upto the extent of 1/6 share of total land measuring 185 kanal 14 marlas and 3/8 share of land

measuring 55 kanal 2 marlas and as such she was owner of land measuring 51 kanal 12 marlas sold by her to the answering defendants, vide sale deed dated 10.01.2013. The said land was got cultivated by Balbir Kaur from the tenants who are now vendees of the suit property from Balbir Kaur. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues reproduced in para 4 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court accepted plea of the respondent/plaintiff that he is in possession of suit land and is entitle to protect his possession except in due course of law. The findings recorded by the trial Court were affirmed in appeal by the Additional District Judge, Amritsar.

Counsel for the appellants would argue that respondent/plaintiff is co-owner of joint land only to the extent of approximately 33 kanals, therefore, he cannot be allowed to seek injunction in respect of land measuring 109 kanal 13 marlas which is much more than his share in the joint land. The second submission made by counsel is that the appellants filed an application for correction of khasra girdawari and was corrected vide order dated 13.02.2014 Ex.D1 passed by S.D.M., Baba Bakala and khasra girdawari for the year 2012-13 Ex.D2 is in favour of the appellants/defendants. It is further argued that as the appellants are co-sharers in the joint land having purchased share of Balbir Kaur daughter of Ujagar Singh, the Courts have committed a gross error

rather illegality by allowing equitable and discretionary relief of injunction against co-sharers of the joint land.

I have heard counsel for the appellants, perused the paper-book and documents placed on record.

Apart from the fact that there is delay of 281 days in filing the appeal, the appeal is devoid of merit and liable to be dismissed.

Counsel for the appellants has failed to advance any argument much less meaningful to say that consistent findings recorded by the Courts suffer from perversity or raise a question of law that needs determination in second appeal. He has not challenged findings of the Courts that the respondent/plaintiff being one co-sharers of the joint land is proved to be in possession of suit land measuring 109 kanal 13 marlas. Even if a co-sharer is in possession of joint land in excess of his share, he cannot be dispossessed except in due course of law by seeking partition of the joint land. In this view of the matter, first contention raised by the appellants with regard to the respondent being not entitle to seek injunction against forcible dispossession is misconceived and liable to be rejected.

The appellants have staked their claim to be co-owner of suit land on the basis of sale deed dated 10.01.2013 in respect of land measuring 51 kanal 12 marlas purported to be executed by Balbir Kaur daughter of Ujagar Singh with further plea that land was got cultivated by Balbir Kaur from the vendees/appellants as tenants. Counsel for the appellants has failed to point out any materials on record to substantiate their plea that either Balbir Kaur was recorded to be in possession of suit land or the appellants are recorded to be in possession of the said land as cultivators much less tenants under Ms. Balbir Kaur. As has been rightly

held by the Court that correction of khasra girdawari during pendency of the civil suit involving dispute regarding possession is of no consequence/avail for the appellants. In this view of the matter, appellants cannot derive any advantage to their contention from the order passed by S.D.M., Baba Bakala or subsequent entry in khasra girdawari.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

MAY 27, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no