

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

**RSA No.3298 of 2017 (O&M)
Date of Decision.24.05.2019**

Suman and others

...Appellants

Vs

Vinod Goel and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Khunger, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in claiming possession of land comprised of khasra No.1214, 1223 and 1224 having Khewat No.1067 and 1068 measuring 1 kanal 8 marlas as owners in possession as per sale deed dated 10.07.2006. In fact, Rajesh Kumar was real owner 1 kanal 8 marlas as the entire land of khasra No.1221 is 2 kanal 16 marlas, which was purchased by plaintiff No.3 and his brother Subahsh |Chander now deceased, father of Rajesh Kumar jointly in equal shares from Lajwant Singh and Subhash Chander sons of Fateh Chand vide sale deed dated 4.2.1997 but the sale deed of entire 2 kanals 16 marlas of land was executed and registered in favour of plaintiff No.3, as such ownership of 1 kanal 8 marla of khasra No.1221 was reflecting in the name of plaintiff No.3 as benami. Plaintiff No.3 sold his share in 2004 and remaining 1 kanal 8 marlas of land of khasra No.1221 was coming in possession of Subhash Chander and after his death, his son Rajesh Kumar. On 11.07.2006, defendant illegally, unlawfully and forcibly without consent of plaintiffs, occupied the suit property and therefore,

cause of action accrued to file the suit.

Defendant opposed the suit by raising objection regarding maintainability of relief as sought for in the absence of partition. On merit, it was stated that defendant along with Ram Dayal Garg and his wife Anupam Garg purchased the property vide four sale deeds measuring 12 kanals 17 marlas comprised in khasra No.1211, 1222 and 1223 and vide registered sale deed dated 29.5.2006 from Harbhajan Singh in favour of defendant and land measuring 9 marlas out total area 12 kanals 17 marals and 5/320 share of khasra No.1214.

Plaintiffs in respect of aforementioned pleadings examined himself and tendered into evidence several documents i.e. jamabandi for the year 2006-2007, site plan, general power of attorney whereas defendants examined three witnesses and brought on record Ex.D1 to D10.

Mr. Khunger, learned counsel appearing on behalf of the appellant submitted that both the Courts below have non-suited the plaintiff only on the ground that plaintiff cannot seek possession of any specific portion of suit property without seeking relief of partition amongst all co-sharers but failed to notice that jointness was with regard to Khasra No.1223. There was no dispute to other two khasra numbers i.e. 1214 and 1224.

I am afraid aforementioned argument would not be sustainable for the simple reason that if defendant was not a co-sharer, onus heavily relied upon appellant-plaintiff to get the land demarcated in order to ascertain encroachment at the behest of the

defendant. In the absence of the same, the Courts below had no other occasion but to dismiss the suit. As regards khasra No.1223, finding regarding maintainability in the absence of partition is perfectly justified.

In view of aforementioned circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by 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.

(AMIT RAWAL)
JUDGE

May 24, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No