

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

**RSA No.2978 of 2018 (O&M)
Date of Decision : 23.09.2019**

Asha

.....Appellant

Versus

Pardeep

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Piyush Agarwal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondent/plaintiff was decreed by the trial Court, vide judgment and decree dated 04.03.2017. As the appeal preferred against the said decree failed and was dismissed on 10.11.2017, the appellant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff-Pardeep sought a decree for possession by way of partition as also for injunction in respect to the suit property comprised in khewat No.274/234 min, khatoni No.284, Khasra No.206(0-9), gair mumkin plot/bada situated in village Sunderheti, Tehsil Matanhail, District Jhajjar.

In brief, the case set out by him was that he was a co-owner in the suit land to the extent of 1/3rd share which he purchased vide a

registered sale deed dated 19.03.2007. As a result mutation No.1430, was sanctioned in his favour. Defendant Asha was owner to the extent of 2/3rd share in the suit land. The suit property was still joint and had not been partitioned by metes and bounds. As the defendant intended to interfere in his possession over the portion in his occupation and encroach upon the front side of the entire suit land, thus, the suit.

In defence, it was not disputed that plaintiff had 1/3rd share in the suit property and the remaining 2/3rd share was owned by defendant Asha. Further, she was in possession of a portion of the suit property and to the extent of her share and never caused any interference in the possession of the plaintiff. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that ownership and the shares held by the parties in the suit property were not in dispute. It was not disputed either that suit property was still joint and had not been partitioned. In fact, the evidence led by the defendant showed that she had constructed a house upon a portion of the suit property to which the grievance of the plaintiff was that she had raised construction upon an area more than her share and entitlement. Further, the *rasta* shown in the site plan lead to the portion that was left out for the plaintiff and the defendant intend to raise construction on more valuable portion and include the entire area in her possession. None less than, Satish Kumar DW2, examined by the defendant, testified in his deposition the construction of a house by Asha. Jagvinder Singh (DW3) Draftsman who prepared the site plan

Ex.D1, conceded in his cross-examination that in the aksh-sizra no *rasta* was reflected, though reflected in the site plan Ex.D1 prepared by him on instructions of the plaintiff. Thus, it was concluded that the act of the defendant raising construction upon more valuable portion, while the property was still joint, would amount to ouster of the plaintiff. Thus, the only and the inevitable conclusion the Courts below could reach was to order to pass a preliminary decree for partition and restrain the defendant from raising any construction and changing the nature and character of the suit property.

On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusion arrived at by both the Courts was either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent finding recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

23.09.2019

Manoj Bhutani

(ARUN PALLI)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable**Yes/No**