

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3835 of 2018 (O&M)
Date of Decision : 23.10.2019

Sukhdev Singh

.....Appellant

Versus

Sukhmander Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.P.K.S. Pkhoolka, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 08.12.2015, and as even the appeal preferred against the said decree failed and was dismissed on 08.09.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

A decree for injunction was prayed for restraining the defendants from causing interference in the peaceful possession of the plaintiff over any portion of a land measuring 5176.11 S.Y. marked as ABCDEF, shown in the red colour in the site plan and comprised in specific numbers as set out in the cause title of the suit.

In brief, the case set out by the plaintiff was that the originally Smt. Baljit Kaur @ Chhoti was co-sharer in the land measuring 125 bigha 18 biswas and 37 bigha 16 biswas, situated in the revenue estate of village Patti Jhutti, Bathinda. She was in exclusive possession of the land depicted

and marked as ABCDEF in the site plan. Baljit Kaur, vide sale deed dated 20.05.2010, sold a land measuring 4 bigha 1.1/2 biawas i.e. 11/672 share in 125 bigha 18 biswas and 3/56 share in 37 bigha 16 biswas in favour of plaintiff and his wife Paramjit Kaur, possession of the suit land was accordingly delivered to the plaintiff and his wife and since then they were in peaceful possession. But as the defendant sought to interfere in their possession, thus the suit.

Defendant No.1, in the written statement filed by him, pleaded inter alia that the suit property was joint and has not yet been partitioned amongst the co-sharers and, therefore, plaintiff was not entitled to seek injunction. 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, for, the plaintiff to succeed he was required to establish his exclusive possession over the suit property. Undoubtedly, he had purchased the suit property from Baljit Kaur, who was alleged to be in exclusive possession thereof but no evidence was led by the plaintiff to substantiate the said plea. In other words, plaintiff failed to show that Baljit Kaur who happened to be a co-sharer in the joint khewat and had sold her share to plaintiff and his wife, was in exclusive possession of the suit land. None other than plaintiff himself conceded in his cross examination that suit land was a part of the joint khata consisting of 125 bighas and 18 biswa and although mutation No.69315, was sanctioned in his favour post execution of the sale deed by Baljit Kaur but no specific khasra numbers were mentioned therein. The position of law is settled that

a co-sharer in a joint khata was not entitled to seek injunction against the other co-sharers unless proved to be in exclusive possession of the disputed portion and the only remedy is to seek partition. Thus, the only and the inevitable conclusion that could be reached: plaintiff was not entitled to the injunction prayed for.

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

23.10.2019
Manoj Bhutani

Whether speaking/reasoned
Whether reportable

(ARUN PALLI)
JUDGE
Yes/No
Yes/No