

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4268 of 2018

Date of Decision: 25.03.2019

Prem and others

.....Petitioners

Vs.

Ram Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Devender Nirban, Advocate, for the appellants.

AMOL RATTAN SINGH, J. (ORAL)

By this appeal, the appellants challenge the judgments and decrees issued by the learned courts below, by which the suit filed by respondents no. 1 to 3 herein has been allowed and a decree granting them perpetual injunction against the appellants (defendants in the suit) has been passed, restraining them from interfering in the possession of the plaintiffs over specific portions of land measuring 1 'Kanal' 3 'Marla' 3 'Sarsai', comprised in 'Khewat' no. 424 and 429, 'Khatoni' no. 463, situated at village Rajapur, Tehsil & District, Panipat.

Learned counsel for the appellant at the outset points to the respondents-plaintiffs own case as narrated in paragraph 2 of the judgment of the learned trial Court, whereby the parties are admitted to be co-sharers in a joint 'Khewat' bearing nos. 424 and 429 in 'Khatoni' no. 463; and consequently he submits that no decree of perpetual injunction can be issued in favour of one co-sharer against another.

In support of his contention, he relies upon a judgment of a co-ordinate Bench of this Court in **Jangir Singh** vs. **Naranjan Singh and others**

2015 (1) RCR (Civil) 149, in which it was held as follows:-

“10.It is the case of the plaintiffs that the suit land has not been partitioned till date. The settled principle of law is that every co-sharer has a right on every inch of the suit land and therefore a co-sharer has no right to claim an injunction against all other co-sharer in respect of the joint holding. The only remedy available is to get the joint holding partitioned. Accordingly, instead of filing a suit for permanent injunction the remedy available to the plaintiffs was to get the suit land partitioned in due process of law.”

Thereafter, it was held as follows:-

“11.According to the report of the Local Commission Ex.PW5/A, he visited the spot on 27.04.1981 and found some construction already in existence on a portion of the suit land as was shown by him in the site plan Ex.PW5/D prepared by him. The remaining suit land was said to be lying vacant. He added that the construction on a portion of the suit land was reported to be of defendant Jangir Singh. Both the Courts below consistently accepted the factum of existence of construction of the defendant on a portion of the suit land. In other words, admittedly the defendant is in exclusive possession of a portion of the suit land. Being in exclusive possession, he is legally entitled to protection of his possession until the joint land is partitioned. The plaintiffs on the basis of their claim of being co-sharers cannot restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiffs have is to seek partition of the suit land. The amount being spent by the defendant in raising construction on a portion of the land in his exclusive possession is at his own risk. When the plaintiffs have an equally efficacious remedy available to them as provided under Section 41 of the Specific Relief Act, their suit for a permanent prohibitory injunction against the defendant is

not maintainable. In 2006(2) Civil Court Cases 106, M/s DCM Shriram Consolidated Ltd. Vs. Jai Singh, this Court held that co-sharer in exclusive possession of joint property for sufficient long time can raise construction.

12. In my considered opinion, it was improper for the learned first appellant Court to have reversed the finding of learned trial Court and restrain the defendant from raising construction on the portion of suit land in his exclusive possession. If that order is left to sustain, the matter would never end. It was the plaintiffs who had a grievance against raising of construction by the defendant, therefore, it was for them to have resorted to the remedy available to them under the law and that was to seek partition of the suit land before appropriate forum and their suit for injunction was not maintainable.”

(All emphasis applied by this Court).

Before looking at the applicability of the said judgment, what has been held by the learned courts below needs to be noticed, to the effect that even the appellants-defendants in their testimonies did not deny that they had constructed upon the suit land and were living in their houses, with the case of the plaintiffs too being that they too had constructed over their houses in the suit land and were also living in the same.

The learned trial Court after considering the aforesaid contentions went on to notice that the plaintiffs are owners of 1 'Kanal' 3 'Marlas' 3 'Sarsai' as per mutations entered in their favour, bearing numbers 2219 and 2220 dated 13.09.2012.

After inheriting their respective shares from their predecessors-in-interest, the appellants-defendants also came to be shown as owners of 3 'Marlas' of land in the same 'Khewat' nos., i.e. 424 and 429, and consequently, each party

had in fact admitted that they were in possession of houses constructed by them.

It was therefore held that a decree of perpetual injunction could not be denied to the respondent-plaintiffs.

A contention raised on behalf of the appellants to the effect that they had purchased 1 '*Kanal*' 3 '*Marlas*' and 3 '*Sarsai*', from plaintiff no. 1 Ram Chander for a consideration of Rs. 1,000/-, was rejected on the ground that with the said property stated to have been purchased for a sum of Rs. 1,000/-, no sale deed had been produced to prove that and therefore, with Section 17 of the Registration Act, 1908, stipulating that any immovable property for a value of more than Rs. 100/- being a necessarily registrable document, any such (oral) sale could not be accepted in the absence of a registered document duly led by way of evidence to prove it.

Hence, holding that even as per the admission of the parties in their evidence that they were in possession of the houses constructed by them, the suit of the respondents-plaintiffs was decreed in their favour by the trial Court.

The first appeal filed by the present appellants was dismissed by the learned lower appellate Court essentially on the same reasoning, further holding that it was a simple suit seeking permanent injunction, whereby both parties were shown to be in separate possession of their respective shares in the suit property.

Having considered the matter, in view of the above findings, I do not see how the judgment relied upon by learned counsel for the appellants is applicable in their favour, because though in that case it was first observed that every co-sharer has a right on every inch of the suit land and therefore a co-sharer has no right to claim an injunction against all other co-sharers in respect of the joint holding and the only remedy available is to get the joint holding partitioned; however, thereafter, it was held that with the defendant admittedly being in

exclusive possession of a portion of the suit land, he was legally entitled to protection of his possession until the joint land is partitioned, and the plaintiffs on the basis of their claim of being co-sharers could not restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiffs would have was to seek partition of the suit land.

In the present case also, though the land has not been formally partitioned, the parties have in fact admitted to being in possession of their respective constructed portions. Therefore, the principle contained in the ratio of what was held in **Jangir Singhs'** case, is actually against the appellants.

Consequently, finding no merit in this appeal, it is dismissed in *limine*.

March 25, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes