

RSA-4915-2017 (O&M)

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

**RSA-4915-2017 (O&M)
Date of decision : 14.01.2019**

Naresh Puri and another

... Appellants

Versus

Jaon Jakoinao @ Jakoinao Joan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan S. Gill, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed at the instance of the defendant Nos.3 and 4, against the concurrent findings of fact, whereby the suit of the plaintiff for declaration of having become owner in possession of land measuring 1 kanal 1 marla out of Khasra No.25R/3/1/2/2 measuring 3 kanal 19 marals in Khewat No.87 Khatoni No.226 situated on defence road, in the revenue estate of Village Kahanpur, Tehsil and District Pathankot with a consequential relief of permanent injunction restraining the defendants from dispossessing the plaintiff in her exclusive possession.

It was asserted that the plaintiff was serving in Air India and appointed attorney to file the suit. Defendant No.1 purchased large piece of land out of the land bearing Khewat Nos.79, 87 & 89 and had become co-sharer with the persons of total land contained in the khewats for the purpose of setting up the colony and sold to different persons. Defendant No.1 appointed defendant No.2 as his attorney, who sold the specific plot measuring 1 kanal 1 marla out of khasra numbers, aforementioned, with the

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specific dimensions and boundaries, to the plaintiff, vide sale deed dated 08.01.2007 and physical possession was given. Even water connection also provided. It came to the knowledge of the plaintiff that the defendant had sold excess land out of khasra number, in question and in these circumstances, a cause of action arose to claim the declaration and injunction.

Defendant Nos.1 and 2 filed the written statement admitted defendant No.1 to be co-sharer and defendant No.2 is attorney of defendant No.1. The sale of the land by defendant No.1 in favour of the plaintiff was also not denied. Defendant Nos.3 and 4 filed the separate written statement by raising the objection qua maintainability and non-joinder and on merits, it was denied that defendant No.1 purchased the land out of khewat No.79, 87 and 89 and sold the same to the plaintiff. It was explained that Karnail Singh/defendant, had sold the land measuring 2 kanals 10 marals to defendant No.4, vide sale deed dated 08.05.2008, out of khasra number mentioned in the sale deed and mutation bearing No.2060, in this regard, was duly sanctioned. Likewise Kuldip Singh/defendant sold 2 kanals of land to Ram Singh/defendant No.3, vide sale deed dated 16.02.2010 and Karnail Singh sold 8 kanals 16 marlas of Ram Singh, vide sale deed dated 26.09.2008, out of khasra number and so on and so forth.

Since the parties were at variance, the trial Court framed the following issues:-

- "1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the*

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present form? OPD

3. Whether the plaintiff has got no locus standi to file the present suit? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Whether the suit of the plaintiff is hopelessly time barred.?

6. Relief."

In support of the averments, the plaintiff examined J. Surmala as PW-1 and brought on record various documents, whereas the defendant examined Naresh Purias as DW1 and various document brought on record including the sale deed referred to above.

On the basis of the preponderance of evidence, the trial Court decreed the suit and the appeal laid before the lower Appellate Court was dismissed.

Learned counsel appearing on behalf of the appellants-defendant Nos.3 and 4 submitted that the status of the plaintiff was of co-sharer and the suit for declaration was not maintainable and the remedy for a co-sharer was to seek the partition. The plaintiff has miserably failed to prove exclusive possession in order to claim the injunction. No injunction against the co-owner, in the absence of the exclusive possession, in view of the law laid down by the Full Bench of this Court in "Bhartu V/s Ram Sarup", 1981 PLJ 204, was not maintainable, thus, there is a gross illegality and perversity. Revenue record did not establish the exclusive possession.

I have heard learned counsel for the appellants-defendant Nos.3 and 4, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gill, for, vendor of the plaintiff admitted to have sold the specific area and conferred the physical possession upon the

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plaintiff. If one of the co-sharer was found to be in exclusive possession, injunction can always be issued against the other co-sharer from forcible interference and dispossession till the suit land is partitioned by the metes and bounds. Since the defendant Nos.3 and 4 denied the ownership of the plaintiff, there was no occasion, but to seek the declaration qua ownership by virtue of the sale deed. Whenever the title is denied, the remedy to the affected parties, is to claim the declaration.

The arguments of Mr. Gill, with regard to the remedy of partition as the plaintiff did not want to have separate possession and keep jointness are also repelled. If at all, the defendants are aggrieved of the same, they are at liberty to seek the partition in accordance with law.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No