

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

RSA No.4583 of 2018(O&M)
Date of decision: 22.10.2019

Balbir Singh

... Appellant

Versus

Satish Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Dharam Pal Balda, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondents/plaintiffs was decreed by the trial Court vide judgment and decree dated 06.12.2013. For the appeal preferred against the said decree failed and was dismissed on 02.08.2017, the appellant-defendant(s) is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for injunction restraining the defendant(s) from lifting soil from the land in dispute as fully depicted in paragraph 2 of the plaint and from changing the nature thereof in any manner without first seeking its partition by meets and bounds.

In defence, it was pleaded, *inter alia*, that partition proceedings with regard to the suit property were pending between the parties before the Assistant Collector Ist Grade, Nilokheri. Further, the defendants were not

extracting soil from the suit land as alleged, rather they only wanted to level the disputed land. Thus, 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 jamabandies Ex.P1 and Ex.P2 showed that plaintiffs and defendants No.1 to 4 were co-owners in the suit property. It was observed that even though plaintiffs failed to prove that defendants were lifting earth from the suit property, but nevertheless no alterations could be brought about by a co-owner in a joint khata, which could change the nature and character of the joint property and entail complications in partition proceedings. Accordingly, it was concluded that till the suit property was partitioned, for the partition proceedings were pending, none of the parties will lift the earth from the suit land.

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.

The appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

22.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO