

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

RSA No. 6162 of 2017 (O&M)

Date of decision: 15.05.2019

Raj Kumar

... Appellant

Vs.

Smt. Vijay Rani alias Vijay Lusmi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S. Kaushik, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is, at the instance of the plaintiff, directed against the concurrent findings of fact, whereby the suit of the plaintiff for declaration to the effect that land measuring 2 K 2 M which is 42/927 share out of total land measuring 46 K 7 M, comprised in Khewat Khata No. 1124/1921, as per Jamabandi for the year 2003-04, vide sale deed No. 1563 dated 10.06.2011 and land measuring 4 K 4-½ M, which is 84-¼/927 share out of total land measuring 46 kanal 7 marlas comprised in khewat No. 1124/1921, according to jamabandi for the year 2003-04, vide sale deed no. 1564 dated 10.06.2011, was sold by defendant set no.1 in favour of defendant set no.2 alongwith permanent injunction restraining defendant set no.2 from disposing of the land by way of sale deed, mortgage was dismissed.

The plaintiff alleged that defendant set No.1 had shown themselves to be widow and daughters of Subhash Chand and executed the aforesaid sale deeds. No notice was given to the plaintiff before accepting mutation. At the time of death of Subhash Chand, succession of Sohan Lal had not yet opened.

Upon notice, defendants appeared and contested the suit of the plaintiff by way of preliminary objections. On merits, it has been averred that defendant set no.1 had sold land measuring 6 K 6- ½ M to defendant set no.2- Vijay Luxmi, widow of Subhash Chand, who subsequently remarried with Krishan Kumar and Deepika, Monika and Ruchi are the daughters of said Subhash Chand. It has also been averred that after the death of Subhash Chand, defendant no.1 alongwith defendants No. 2 to 4 shifted with her brother at Hisar, where she got married with Krishan Kumar. Defendants No. 2 to 4 used to visit their mother at Barwala. Parmod Kumar, son of the plaintiff moved an application in writing to sanction mutation of Sohan Lal, which was legally sanctioned. Defendants No. 1 to 4 had sold their shares in the land and possession was also transferred to defendant no.5. It was also admitted that Subhash Chand died on 11.12.1991 and Sohan Lal died on 8.3.2008 and urged for dismissal of the suit.

From the pleadings of the parties, four issues were framed by the trial Court. Thereafter both the parties were allowed to lead oral as well as documentary evidence in order to prove their respective claims.

The trial Court after noticing the evidence led by both the parties as well as after going through the records placed on the file, dismissed the suit of the plaintiff. The appeal filed by the plaintiff was also dismissed by learned Addl. District Judge, Jind, vide judgment and decree dated 12.05.2017.

Learned counsel for the appellant submits that during the pendency of the suit, partition proceedings at the instance of one of the co-sharers has already been filed before Tehsildar, which is going to be finalised.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit.

The defendants could not have filed a suit properly by giving a specific properties in the absence of partition. It is settled law that a co-sharer can seek injunction against other co-sharer if he is able to prove his exclusive possession over the suit property. A co-sharer cannot get injunction against other co-sharer and the remedy is to file a suit for partition of the specific area as the sale deeds reflected the shares of the co-sharers and not of the specific areas. The possession can always be protected by way of filing suit for partition claiming the respective shares with regard to drawing the final decree.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

15.05.2019
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Whether Speaking/Reasoned Yes
Whether Reportable No