

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

RSA 4546 of 2019 (O&M)

Date of Decision: February 03, 2020

Nihal Singh		...Appellant
	Versus	
Lal Singh and others		... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : None for the appellant.

Mr. Sandeep K. Yadav, Advocate
for the respondents.

FATEH DEEP SINGH, J. (Oral)

Then plaintiffs, Lal Singh, Savitri, Devinder Singh and Manoj Kumar filed against Nihal Singh present appellant a suit for permanent injunction. The stand of the plaintiffs was that they and contesting defendant Nihal Singh and proforma defendant Mahesh Kumar are co-sharers of property bearing Khewat No. 25, Khatoni No. 29, Khasra No. 235 and Khasra

No. 442/3 in the area of village Pithrawas, Tehsil and District Rewari as per the jamabandi for the year 1999-2000.

It is alleged that Khasra No. 235 is a vacant plot of land and apprehending that the contesting defendant No. 1, who is a strong headed person might exclude the plaintiffs from use of this property illegally and forcibly, they filed the suit in question.

The Court of learned Civil Judge (Junior Division) Rewari partly decreed the suit allowing decree of permanent injunction restraining defendant No.1 from using more than his share of this disputed property or raising any construction thereon but denied the plaintiffs any relief as to mandatory injunction regarding demolition of the construction so raised thereon by the contesting defendant No.1.

Aggrieved over these findings, the plaintiffs filed an appeal and the Court of learned Additional District Judge Rewari through impugned findings dated 30.08.2018 partly allowed the appeal and decreed the suit of the plaintiffs in toto where findings on issue No. 2 were reversed and directed the contesting defendant to demolish the boundary wall at his own expenses. That his how, the contesting defendant now appellant aggrieved over the findings has come up before this Court.

Heard Mr. Sandeep K. Yadav, learned counsel for

the respondents and perused records of the case. None appeared for the appellants.

It is duly admitted by the counsel for the two sides that the disputed plot is a joint ownership in which the plaintiffs and the defendants are co-sharers. It is also not displaced that the plot in question is unpartitioned joint property and, therefore, in view of the well settled proposition of law laid down by a Full Bench of this Court in **Bhartu Vs. Ram Sarup**, 1981 PLJ, 204 having held that in a joint unpartitioned property each of the co-sharers is owner in possession of every inch of the property unless and until there is continuous and uninterrupted possession of one of the co-sharers over a long period of time exclusively to the tune of exclusion of other co-sharer's share or acquiescenced by other co-sharers.

Reverting back to the instant case, it is not there in the evidence of the parties that any of them is in exclusive possession rather revenue record and the stand of the parties clearly reflected that the parties on the date of filing of the suit were in joint possession of this unpartitioned property. The Court of learned Additional Sessions Judge in the impugned findings in para No. 27 held it so and, thus, has rightly modified the relief, accordingly, by partly allowing the appeal. The counsel could not prevail upon this Court as to any illegality or

perversity in the findings recorded by the learned first appellate Court, which need to be upheld and the appeal being hopelessly without any merits stands dismissed.

February 03, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No