

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

RSA No.875-2014 (O&M)

Date of Order:06.01.2020

Ashok Kumar and others

..Appellants

Versus

M/s Omega Farms and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Kanwar, Advocate, for the appellants.
Mr. Aman Bansal, Advocate and
Ms. Anjali Bansal, Advocate,
for respondents no.1, 3 and 4.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in regular second appeal against the concurrent findings of fact arrived at by the Courts below, decreeing suit for mandatory and permanent injunction.

It is not in dispute that the plaintiffs-respondents purchased 42 kanals and 9 marlas of land comprising khewat/khatauni nos.131/166, khasra no.2/16/2(0-16), 17(7-10), 18(8-0), 19/1(4-0), 22//2/1(2-0), 23/1(4-0), 24/1/1(2-3) and land comprising khewat/khatauni No.135/170 khasra No.2/19/2(4-0), 28(8-0), 22/1/1/(2-0), by 3 different sale deeds from the defendants-appellants. It is the case of the plaintiffs-respondents that defendants have forcibly constructed a temporary wall blocking their water supply line. Appellants are running a brick-kiln, whereas plaintiffs-respondents are running a poultry farm. It is further not in dispute that the land measuring 42 kanals and 9 marlas was sold through registered sale deed by specifically identifying the land through khewat/khatauni/rectangle/khasra numbers.

During the pendency of the suit, a Local Commissioner was

appointed, who also reported that the defendants-appellants have constructed a temporary wall inside the land purchased by the plaintiffs-respondents. Thus, both the Courts have found that the plaintiffs-respondents are entitled to the decree for mandatory and permanent injunction as prayed for.

This Court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel appearing for the defendants-appellants has submitted that the plaintiffs-respondents had purchased undivided share in the large property and therefore, they cannot claim injunction against the defendants. He further submits that since the parties to this litigation are co-sharers, therefore, the remedy for the plaintiffs is to file a suit for partition. He further submitted that every co-sharer is deemed to be an owner in possession of every part of the joint land.

On the other hand, learned counsel for the plaintiffs-respondents has submitted that pursuant to the registered sale deeds executed by the defendants-appellants, plaintiffs were put in possession of the land comprised in specific khasra numbers on which a poultry farm is running. He, hence, submitted that the plaintiffs-respondents are in possession of specified and identifiable portion and the defendants-appellants are estopped from now claiming their possession after having delivered possession to the plaintiffs pursuant to the sale deeds executed and registered.

This Court has considered the submissions and find no substance in the arguments of learned counsel for the appellants.

A specified portion/piece of immovable property has been sold by the appellants to the respondents through 3 registered sale deeds, validity whereof is not in question. Under the 3 registered sale deeds, possession of specified land comprised in different khasra numbers were delivered on which plaintiffs-respondents are running their poultry farm.

In these circumstances, defendants-appellants neither have any legal right nor equity to claim any right of possession in the property which is subject matter of the sale deeds.

Learned counsel for the plaintiffs-respondents has made a statement that plaintiffs-respondents are in the possession of 42 kanals and 9 marlas of land only which is subject matter of the sale deed.

Keeping in view the aforesaid facts, once the plaintiffs-respondents are found to be in settled possession of the property purchased, identified by khasra numbers, they are entitled to protect their possession by way of decree for injunction. Even if the argument of learned counsel for the appellants is accepted that both the parties have become co-sharers, the remedy for the defendants-appellants is to seek partition, if any maintainable in accordance with law.

This court does not find any ground to interfere with the decree of injunction passed by the Courts below.

Dismissed.

C.M.No.10195-C-2019

Application is allowed.

Amended memorandum of parties is taken on record.

January 06, 2020

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)
JUDGE

: Yes/No

: Yes/No