

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A No. 5640 of 2018 (O&M)
Date of Decision : 20.02.2020

Gurnek Singh

.....Appellant

Vs.

Manjit Kaur & Ors.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Namit Gautam, Advocate, for the appellant.

ALKA SARIN, J. (Oral)

C.M No. 15557-C of 2018

For the reasons mentioned in the application, delay of 05 days
in filing the appeal is condoned.

C.M. Stands disposed of.

C.M No. 15558-C of 2018

For the reasons mentioned in the application, delay of 19 days
in re-filing the appeal is condoned.

C.M. Stands disposed of.

Main Case

The present appeal has been preferred against the judgments
and decrees dated 06.05.2014 and 17.01.2018, whereby the suit of the
plaintiff-appellant for permanent injunction was dismissed.

2. In brief the facts relevant to the present *lis* are that the
plaintiff-appellant had filed a suit for permanent injunction for restraining all
the defendants from changing the nature of the land by digging or filling earth

or by way of making any type of alteration, construction or demolition and further for restraining defendant-respondent Nos. 1 and 2 from selling any specific portion or more than their share and further prayed for restraining the defendant-respondents from interfering in the peaceful possession of the plaintiff-appellant.

3. Defendant-respondent Nos. 1 and 2 filed a joint written statement and raised a primarily objection with regard to the maintainability, lack of *locus standi* and further that the plaintiff-appellant was barred by his own act and conduct from filing the suit. It was averred that the defendant-respondents No.1 and 2 were in exclusive possession of the suit property and had every right to deal or use the same..

4. On the basis of the pleadings of the parties and the evidence led, the Trial Court returned a finding that the plaintiff-appellant was a co-sharer along with defendant-respondents, which was evident from the jamabandi for the year 2008-09, Ex.P-1 produced by the plaintiff-appellant himself. It is also an admitted fact that no partition had been effected between the parties.

5. In view of the said finding, the suit by the plaintiff-appellant was dismissed on the ground that no injunction could be granted against a co-sharer. Against the said judgment and decree dated 06.05.2014, an appeal was preferred before the lower Appellate Court. The lower Appellate Court vide judgment and decree dated 17.01.2018, upheld the finding returned by the Trial Court.

6. Aggrieved by the said judgments and decree dated 06.05.2014 and 17.01.2018, the plaintiff-appellant has filed the present regular second

appeal.

7. I have heard learned counsel for the plaintiff-appellant.

8. It has been contended that the plaintiff-appellant is a co-sharer in the property and is in exclusive possession and hence is entitled to the relief of injunction. However, there is no evidence on the record from which it could be ascertained that the plaintiff-appellant was in exclusive possession of the property. Infact the findings of the Courts below are to the contrary and hold that the plaintiff-appellant was co-sharer and no partition had been effected and hence was not entitled to an injunction. The suit of the plaintiff-appellant would also be barred under Section 41 of the Specific Relief Act as alternate remedy for filing the suit for partition is available to the plaintiff-appellant.

9. It is trite that a co-sharer cannot seek an injunction against another co-sharer except in a case where he shows that the other party is in exclusive possession of the common property and the act of the person in possession of the property amounts to ouster of the co-owner. The said proposition is supported by a Division Bench judgment of this Court in **Bachan Singh Vs. Swaran Singh 2000(3) PLR 416**. Relevant portion of the judgment is extracted below:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession. (ii) Mere making of construction or improvement of, in the common property does not' amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to' prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

10. The case as set up by the plaintiff-appellant does not satisfy the requirement for the grant of an injunction as laid down by the Division Bench of this Court.

11. In view of the above, I do not find any merit in the present appeal. Hence the same is dismissed.

February 20, 2020
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(ALKA SARIN)
JUDGE

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