

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

RSA No. 218 of 2021(O&M)

Date of Decision: October 11 , 2021.

Jarnail Singh

..... APPELLANT

Versus

Maya Devi and another

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Raghav Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant/plaintiff is aggrieved of judgments and decrees dated 30.05.2017 and 11.12.2019 passed by the learned Additional Civil Judge (Senior Division), Kurukshetra and the learned Additional District Judge, Kurukshetra, respectively.

Brief facts necessary for the adjudication of the case are that, appellant/plaintiff filed a suit for perpetual injunction for restraining the respondents/defendants from changing the nature of the land as described in the plaint, measuring 16 Kanals 16 Marlas, by raising construction or placing/removing earth therefrom. Nature of the suit land is stated to be agricultural. It is pleaded that plaintiff and his brother Rakesh Kumar had 3/4th

share, whereas the defendants were having 1/4th share in the land in question, which had been put to agricultural activity by the parties to the extent of their respective shares. It is pleaded that the defendants were trying to change the nature of land by raising construction and putting/removing earth therefrom. It is further stated that the defendants are not averse to partition of the land in dispute.

Respondents/defendants resisted the suit by filing separate written statements. Various preliminary objections were taken in the written statements, besides, locus standi of the plaintiff. Averments on merits were denied. Defendants are stated to be in exclusive possession of the land to the extent of their respective shares. It is pleaded that the parties were co-sharers and no injunction is maintainable by one co-sharer against other co-sharer. It was submitted that no partition of the land had taken place and the present suit has been filed only to harass them. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial court, on the basis of pleadings of the parties:-

1. Whether the plaintiff is entitled for decree of perpetual (*mentioned as permanent*) injunction as prayed for? OPP
2. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether the plaintiff has concealed the true and material facts from the Court? OPD
7. Relief.

Evidence was led by both the parties in order to substantiate their

claims.

Learned trial court on considering the evidence on record, facts and circumstances of the case, concluded that respondents/defendants being co-sharers were legally entitled to protection of their exclusive possession over a portion of suit land until the joint land is partitioned and there was nothing on record to suggest that any act of the defendants had prejudiced rights of the plaintiff in any manner. It has been observed by learned trial court that record of the case did not reveal any change in the nature of land, detrimental to the interest of the plaintiff. Suit filed by the appellant/plaintiff was accordingly dismissed. Appeal preferred by the appellant/plaintiff was also dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 11.12.2019.

Aggrieved therefrom, present regular second appeal has been filed by the appellant/plaintiff.

Mr. Raghav Sharma, learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in law and on facts in passing the impugned judgments. It is submitted that property in question is admittedly joint. Partition of the property has not taken place and this fact is duly admitted by the defendants. Learned courts below, it is vehemently argued, have ignored the fact that nature of the suit land is sought to be changed by the defendants to the detriment of the appellant. Learned counsel for the appellant refers to the statement of DW3 Maya Devi, defendant, to submit that she is not carrying on any agricultural operation on 10 marlas of land sold to her by one of the co-sharers of the plaintiff. It is thus prayed that present appeal be allowed, both the judgments and decrees be set aside and suit filed by the plaintiff be

allowed throughout.

I have heard learned counsel for the appellant and have gone through the file.

Admittedly, the appellant/plaintiff and his brother Rakesh Kumar had 3/4th share in the suit land. Defendants are admittedly co-owners/co-sharers to the extent of 1/4th share, which they purchased from the brother of plaintiff's father. 10 marlas of the land is in possession of defendant No.1 and 25 marlas are in possession of defendant No.2. Both the learned courts below have returned a concurrent finding of fact against the appellant/plaintiff to the extent that evidence on record did not reveal any change in the nature of land detrimental to his interest. No act on the part of the defendant amounting to ouster, diminution of value or utility of property or illegitimate use was proved by the appellant/plaintiff. Therefore, it was found that suit filed by the plaintiff was dismissed. Learned first appellate court while considering all the arguments raised by the appellant/plaintiff has rightly dismissed his appeal.

Learned counsel for the appellant is unable to deny that the suit property as of now is still joint and status of the parties is admittedly reflected to be that of co-sharers in the revenue record. Much stress has been laid by learned counsel for the appellant on the testimony of defendant No.1, who deposed as DW3 before the learned trial court. I have perused the testimony of DW3 Maya Devi, a copy of which was circulated in the WhatsApp group created for the purpose of video conferencing. DW3 Maya Devi has stated that she is in possession of the 10 marlas of the suit land and is using the same for domestic purposes for putting Goharas, Koops etc. There is a mention of trees on the land. DW3 Maya Devi also referred to the photographs of the property in question, Mark 'DA' to 'DJ'. Learned counsel for the appellant is indeed unable to point

out any evidence on record which indicates any act on the part of the defendants, which amounts to ouster, diminution of value or utility of property or detrimental to the interest of co-owner out of possession, which would justify an injunction in favour of the appellant/plaintiff.

Division Bench of this Court in Bachan Singh v. Swaran Singh, 2000(3) RCR (Civil) 70 has held as under:-

“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.”

In the given factual matrix as above, both the learned courts below have returned correct, concurrent findings of fact, after proper appreciation of

evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 30.05.2017 and 11.12.2019 passed by the learned Additional Civil Judge (Senior Division), Kurukshetra and the learned Additional District Judge, Kurukshetra, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

October 11 , 2021.
'om'

(LISA GILL)
JUDGE

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