

118

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****RSA No.621 of 2022 (O&M)****Reserved on : 23.11.2022****Date of Decision : 30.11.2022**

Richpal Singh &amp; Others

....Appellants

VERSUS

Bhagwat Parshad &amp; Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Kulbhushan Sharma, Advocate for the appellants.

**ALKA SARIN, J.**

The present appeal has been preferred by the plaintiff-appellants against the impugned judgments and decrees dated 15.10.2018 and 08.01.2021 passed by the Trial Court and the lower Appellate Court respectively, whereby their suit has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for possession along with a prayer to direct the defendant-respondents to remove the illegal and unauthorized construction and encroachment from the suit plots and to direct them to restore the actual, physical and peaceful vacant possession of same to plaintiff-appellants. As per the plaintiff-appellants, in 1991 they had purchased the suit plots from Deep Chand who was the GPA of Mahender Singh son of Duli Chand and that mutation was also sanctioned in their favour. However, the defendant-respondents, taking advantage of the absence of the plaintiff-appellants,

encroached upon the suit plots and constructed their house on it which was bearing house no.3829 located in Parwatia Colony Part-2, near Urmila Public School, NIT Faridabad. On 22.07.2014 the plaintiff-appellants even reported the matter to the Police.

Upon notice the defendant-respondents filed a written statement raising preliminary objections and averring that defendant-respondent No.5 was absolute owner in possession of the suit property measuring 122 sq. yards in view of sale deed no.2768 dated 02.6.2008 and that she had constructed her house with her husband and was in peaceful possession of the same without any objection from anyone. Mutation was also sanctioned in her favour and she had been paying the house tax and other miscellaneous taxes to MCF and an electricity connection had also been issued in her name.

On the basis of the pleadings of the parties the followings issues were framed :

1. Whether the plaintiffs are entitled to a decree of possession ? OPP
2. Whether the plaintiffs are entitled to a decree of consequential relief of mandatory injunction as prayed for ? OPP
3. Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for ? OPP
4. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
5. Whether the plaintiffs have no cause of action and no locus standi to file the present suit ? OPD

6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
7. Whether the plaintiffs have not come with clean hands ? OPD
8. Relief.

Vide judgement and decree dated 15.10.2018 the Trial Court, based on the pleadings of the parties and the evidence on the record, dismissed the suit of the plaintiff-appellants holding that the sales in their favour were of shares in the joint land which had not been divided and that no individual plots had been sold to them. It was also held that the plaintiff-appellants had not been able to prove that they had taken possession of the area of the individual plot numbers mentioned in the sale deeds. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellants. However, vide judgment and decree dated 08.01.2021 the said appeal was dismissed. Hence, the present regular second appeal.

It is argued by learned counsel for the plaintiff-appellants that the Courts below have erred in dismissing their suit. According to counsel, it was amply proved that the plaintiff-appellants had purchased specific plot numbers which had been encroached upon by the defendant-respondents and, as such, the suit of the plaintiff-appellants ought to have been decreed. It was submitted that the sale deeds in favour of the plaintiff-appellants were also proved and being owners of the suit plots they were entitled to their possession and a restraint order be passed against the defendant-respondents.

I have heard learned counsel for the plaintiff-appellants.

The facts of the case show that the plaintiff-appellants purchased certain shares in the joint property owned by several co-owners.

Though specific plot numbers are mentioned in the sale deeds in favour of the plaintiff-appellants the record shows that the land was not partitioned at the time of the sale and no plot numbers are mentioned in the mutations. Counsel for the plaintiff-appellants has not been able to refer to any document evidencing that the joint holding stood partitioned at the time of the sale in favour of the plaintiff-appellants and what their vendor sold to them was out of the share which came to him upon partition. Even the exclusive possession of the plaintiff-appellants has not been established to warrant grant of an injunction in their favour.

**In Bachan Singh vs. Swaran Singh [2000 (3) RCR Civil 70]**

the Division Bench inter-alia held that :

*“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.”*

The plaintiff-appellants have failed to establish their exclusive possession over the suit plots and there is also no finding that any act by the defendant-respondents was detrimental to the interests of the other co-owners in the joint land.

In view of the discussion above, I do not find any illegality or infirmity in the judgements and decrees passed by both the Courts below. No question of law, much less, substantial question of law, arises in the present regular second appeal. The appeal is accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**30.11.2022**  
Yogesh Sharma

**( ALKA SARIN )**  
**JUDGE**

NOTE : Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO