

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 257 of 2011 (O&M)

Date of Decision: 07.03.2022

Balbir Singh

... Appellant(s)

Versus

Pohkar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kulvir Narwal, Advocate
for the appellant(s).

Mr. Sandeep Kumar Sharma, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The appellant is the plaintiff in a suit for grant of decree for permanent injunction restraining the defendant No.1 to 10 from interfering in his peaceful possession. He claims to be the owner in possession of a plot measuring 10 marlas, comprised in rectangle No. 59 killa No. 22/5/3, situated in the revenue estate of village Jaisa, Tehsil and District Rohtak.

2. The plaintiff claims that he and his brother Pohkar are owners in possession of the aforesaid land. The defendant No.2 to 10 contested the suit, while asserting that the plaintiff and his brother have no concern with the suit land. In the evidence, it has come on record that a suit for partition was filed by the father of the defendant No.2 to 10, which was decided. However, in the execution petition, the authorities came to the conclusion that there is an error in the consolidation of holdings of the land, therefore, the parties are required to file an appropriate application before the consolidation authorities.

3. Both the Courts below have concurrently dismissed the suit, while recording a finding that there is no partition of the property by *metes*

and bounds and since the parties continue to be the owners, therefore, the plaintiff is not entitled to an injunction.

4. The learned counsel representing the appellant contends that the ownership of the plaintiff along with his brother is not disputed by the defendant No.2 to 10 and therefore, to that extent the suit should have been decreed.

5. Per contra, the learned counsel representing the respondents has contended that they do not admit the ownership of the plaintiff along with his brother with respect to the property in dispute.

6. After having heard the learned counsel for the parties, this Court is of the considered view that there is no substance in the present appeal. Both the Courts below, on appreciation of evidence, have found that the parties are co-owners. Their status as co-owner continues because the execution petition, filed by the appellant, has already been dismissed. In these circumstances, the appellant may, if so advised, seek fresh partition.

7. With the observations made above, the present regular second appeal is disposed of.

8. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

March 07, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No