

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

(115)

**RSA-2820-2022 (O&M)
Date of Decision: 20.12.2022**

Tarlok Singh

...Appellant

Versus

Rajni and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. C. L. Sharma, Advocate, for the petitioner.

HARKESH MANUJA, J.(ORAL)

By way of present regular second appeal, challenge has been made to the judgment and decree dated 16.11.2022 passed by the Court of learned Additional Judge, Kapurthala, reversing the judgment and decree dated 11.02.2020 passed by the Court of Civil Judge (Jr. Divn.), Kapurthala, thereby resulting into dismissal of a suit for permanent junction filed at the instance of appellant/plaintiff.

Brief facts of the case are that the appellant/plaintiff claiming himself to be co-sharer in the suit property in the head-note of the plaint and situated at Village Bhetan, Tehsil and District Kapurthala, filed a suit for permanent injunction against respondents/defendants. It was pleaded in the plaint that without getting the suit land partitioned the respondents/defendants were trying to forcibly raise construction over the valuable portion of the joint property abutting the main road, thereby compelling the appellant/plaintiff to file the present suit.

Upon notice, respondents/defendants appeared and contested the suit by filing their written statement, pleading that a suit for permanent injunction filed at the instance of appellant/plaintiff against co-sharer without going for relief of partition was not maintainable. It was also pleaded that the construction being raised at

the instance of respondent No.1/defendant No.1 was not exceeding the share purchased by her.

The trial Court vide judgment and decree dated 11.02.2020, granted permanent injunction in favour of appellant/plaintiff by holding that since the vendor of respondent No.1/defendant No.1 were not recorded to be in exclusive possession of any portion over the joint property, he could not be presumed to have delivered possession of any specific land out of the joint property to respondent No.1/defendant No.1 i.e. his purchaser. Respondents No.1 to 5, challenged the judgment and decree dated 11.02.2022 passed by the Trial Court by way of first appeal which came to be allowed vide judgment and decree dated 16.11.2020 passed by District Judge, Kapurthala and the same has been impugned by way of present appeal.

Learned counsel for the appellant vehemently contends that once as per the revenue record, the appellant/plaintiff as well as respondent No.6 being brothers were recorded to be in joint possession over their common holdings, merely by virtue of alienation of his share, respondent No.6/defendant No.6 could not be presumed to have handed over possession of any part of joint land in favour of respondents. He further submits that in case, the respondent No.1/defendant No.1 is permitted to raise construction over some portion of the joint property, it may affect the rights of the appellants/plaintiffs during the partition proceedings as the respondent No.1/defendant may claim stake her over the same, the same being abutting the main road.

I have heard learned counsel for the appellant and have gone through the paper book. I am not able to accept the contention raised on behalf of appellant to the extent that co-sharer being shown in joint possession of the property in the revenue record cannot deliver possession in favour of his vendee. Even if, one of the co-sharers is recorded to be in joint possession of the property, he can always

deliver/handover possession of the portion of property under his occupation to his vendee unless and until categoric and specific exclusion as regards his possession is established on record, which is missing in the present case. Further, raising of construction by co-sharer over the joint property cannot be termed to detrimental to the interest of his other co-sharer by any stretch of imagination as the construction raised over the joint property would only enhance its value and utility which shall however be always subject to the risk and responsibility of the co-sharer raising construction over the same and would never entail any preferential right in his favour at the time of partition of the joint land. More than that, even the suit for permanent injunction filed at the instance of appellant/plaintiff, being one of the co-sharer in the joint property so as to restrain his other co-sharer from raising construction over the property in his possession was not even maintainable as an efficacious remedy of partition was always available with him and accordingly, simplicitor suit for permanent injunction was barred under Section 41(h) of the Specific Relief Act.

In view of the discussion made hereinabove, I do not find any illegality, perversity in the findings recorded by the first appellate Court as there being no question of law much less substantial question of law involved in the present appeal, the same being devoid of merit is accordingly dismissed in limine.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

20.12.2022
anil

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