

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.119

Case No. : RSA-2094-2019 (O&M)

Date of Decision : September 11, 2023

Jagjit Singh and others Appellants

vs.

Jasbir Singh Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. B. D. Sharma, Advocate
for the appellants.

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GURBIR SINGH, J. :

1. **CM No.5685-C of 2019** : This is application under Section 151 CPC for condonation of delay of 51 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 51 days in re-filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : This Regular Second Appeal has been filed against the concurrent finding of facts recorded by both the Courts below, whereby suit filed by the plaintiff/respondent for permanent injunction was decreed and appeal filed by the defendants/appellants was dismissed.

3. The brief facts, necessary for disposal of the present appeal, are that the plaintiff/respondent Jasbir Singh filed a suit for permanent injunction for restraining the defendants/appellants from taking forcible possession of the land-cum-*haveli*, measuring 04 kanals 17 marlas being

97/193 share, out of total area measuring 09 kanals 13 marlas, comprising in Khasra No.4366, as per *jamabandi* for the year 2010-11, as mentioned in the head note of the plaint.

4. The case of the plaintiff/respondent is that he purchased the suit property vide sale deed dated 08.10.1993 and 21.02.1994. Thereafter, in the area of 60 feet x 50 feet (13 marlas), the plaintiff/respondent constructed a *haveli*. The plaintiff/respondent also proved *jamabandis* for the years 1990-91, 1995-96, 2000-01 and 2005-06 as Ex.P-15 to Ex.P-18 respectively.

5. The case of the defendants/appellants is that defendant no.1 had sold the land measuring 12 kanals 06 marlas in Khasra No.4366 in favour of defendants no.2 to 4, vide sale deed dated 27.12.2013 (Ex.D-1). Mutation was accordingly sanctioned. Defendants also filed counter-claim for restraining the plaintiff to interfere in the land measuring 12 kanals 06 marlas. The learned Trial Court has held that the plaintiff is proved to be in settled possession of the suit property, so, the plaintiff can only be dispossessed in due course of law. Relying on a judgment of Hon'ble Supreme Court in the case of **Krishna Ram Mahale (dead) by his LRs vs. Mrs. Shobha Venkat Rao** reported as **1990 CCC 365 (SC)**, suit of the plaintiff was decreed and counter-claim was dismissed. The defendants filed appeal against the decree of suit and dismissal of counter-claim, which was also dismissed. In the present appeal, the prayer has been made that the judgments of the Courts below, whereby suit of the plaintiff has been decreed, be set aside and suit of the plaintiff be dismissed.

6. Learned counsel for the appellants has mainly argued that the plaintiff and defendants are proved to be the co-sharers. So, they are

deemed to be in possession of each and every inch of joint land, unless the land is partitioned. The land is still joint. No injunction can be granted against the co-sharers.

7. I have heard submissions of learned counsel for the appellants and also perused the case file.

8. The plaintiff/respondent purchased the suit land in the years 1993 and 1994, being 04 kanals 17 marlas being 97/193 share and entry was duly incorporated in the *jamabandi*, which has been proved on the file. From the evidence on the record, the learned Courts below have held that plaintiff has proved that he had constructed a *haveli* on the part of the suit property. The plaintiff is in exclusive possession of the suit property.

9. The defendants purchased the property in December 2012. The plaintiff is enjoying the suit property to the exclusion of other co-sharers. When a co-sharer is in exclusive possession of the property to the exclusion of other co-sharers, then he has got a right to protect the possession till the land is partitioned. A person, who purchases a part of the property from a co-sharer, who is not in possession, cannot interfere in the exclusive possession of the other co-sharer. The Courts below have held that the plaintiff is in settled possession of suit property, so, cannot be dispossessed except in due course of law, but plaintiff is also proved to be in exclusive possession of suit property to the exclusion of other co-sharers and have got right to enjoy his possession till the land is partitioned and other co-sharers have no right to interfere in his possession.

10. In view of the above discussion, this Court is of the view that there is no ground to interfere in the lawful findings recorded by both the

Courts below. Both the Courts below have passed well-reasoned judgments and the same do not warrant any interference by this Court.

11. Accordingly, the present appeal is without any merit and the same is hereby dismissed in limine.

12. Pending applications, if any, shall stand disposed of along with this judgment.

September 11, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.