

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

RSA-3127-2023 (O&M)

Date of Decision: 08.11.2023

Gurpreet Singh

...Appellant

Versus

Paramjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Nitin Sherwal, Advocate and
Mr. Satish Goel, Advocate for the appellant.

Ms. Paramjit Kaur, Caveator-respondent No.1- in person.

HARKESH MANUJA, J. (Oral)

1. By way of present appeal, challenge has been made to the judgments and decrees dated 17.03.2023 and 21.09.2023 passed by the Courts below, whereby a suit for possession, filed at the instance of respondent No.1-plaintiff stands decreed in her favour.

2. Briefly stating, claiming herself to be the owner of property in question i.e. two storey house No.B-III/299/425, Street No.1, Janda Wala Road, Barnala, based on a registered sale deed dated 09.05.2006 executed in her name by her father-Gurcharan Singh, respondent No.1-plaintiff filed a suit for possession of the demised premises against appellant as well as respondent No.2-brother of respondentNo.1-plaintiff. It was pleaded that some criminal litigations were also going on between the parties resulting into registration of

FIR(s) against the defendants. In addition, respondent No.1-plaintiff also set up her case based on a Will dated 06.06.2006 executed by her deceased-father pertaining to some other 10 *marla* land situated within the revenue estate of Barnala.

3. On the other hand, the claim made in the suit was opposed at the instance of defendants while stating that the property in question was given to defendant No.2 by his father (Gurcharan Singh) by way of a family settlement and thereafter it devolved upon defendant No.1 being his son.

4. The trial Court vide judgment and decree dated 17.03.2023 decreed the suit in favour of respondent No.1-plaintiff. Aggrieved thereof, the appellant filed first appeal, however, the same was dismissed vide judgment and decree dated 21.09.2023.

5. Impugning the aforementioned judgment(s) and decree(s), passed by the Courts below, learned counsel for the appellant submits that as per cause of action setup by respondent No.1-plaintiff in the plaint, she was dispossessed in the year 2018, whereas in the previous suit for permanent injunction filed at the instance of appellant-defendant No.1 a decree was passed in his favour holding him to be in possession since 1976. He further submits that the suit property having been purchased by respondent No.1-plaintiff by virtue of sale deed dated 09.05.2006 happened to be part of larger property jointly owned by number of co-sharer and thus at best, the decree for possession granted in favour of respondent No.1-plaintiff has to be treated as a

decree for joint possession and not actual possession and therefore, in pursuance thereof, the appellant-defendant No.1 could not have been dispossessed in execution proceedings.

6. On the other hand, respondent No.1-plaintiff appears in person and submits that undisputedly upon the portion of property having been purchased by her from her father vide sale deed dated 09.05.2006, there consist a house on it and thus, the same is separate and distinct for all intent and purposes from the larger property consisting of open land/vacant plot for common use of all the co-sharers, therefore, the decree granted in her favour cannot be treated to be a decree for joint possession and thus, warrants no interference.

7. I have heard learned counsel for appellant-defendant No.1 as well as respondent No.1-plaintiff (in person) and gone through the paper-book and record. I am unable to find substance in the submissions made on behalf of the appellant-defendant No.1.

8. A perusal of sale deed dated 09.05.2006 (Ex.P-4) shows that the property in question consist of a two storey house thereupon, alienated in favour of respondent No.1-plaintiff by her father and the said alienation was never regarding a vacant plot. In addition, a Will dated 06.06.2006 (Ex. P-35) was also executed by deceased-father of respondent No.1-plaintiff in her favour qua his entire share. Once respondent No.1-plaintiff has been able to prove her ownership over the property having been purchased from her father by virtue of sale deed dated 09.05.2006 and also entries in Municipal records (Exs. P-33 and

P-34) and there being no challenge to the same, she has every right to seek possession thereof. No merits can be found in the submissions made on behalf of appellant-defendant No.1 to the effect that being one of the co-sharer in the suit property, jointly having been inherited by Kehar Singh, by his four sons, namely, Sarwan Singh, Arjan Singh, Gurcharan Singh and Sajjan Singh and the share of Sajjan Singh having been purchased by appellant-defendant No.1 vide sale deed dated Ex. P-29, she being a co-sharer could not ask for separate possession thereof.

8-A Once, appellant-defendant No.1 in a suit for permanent injunction against respondent No.1-plaintiff (in person) and her father (Gurcharan Singh) claimed that only he was in exclusive separate possession of this property, even though it was joint property and thus, having been claimed separate possession, himself, he cannot now refute the claim of respondent No.1-plaintiff qua separate possession while stating the to be part of joint property.

9. In the present case, it has been duly established on record that respondent-defendant No.1 having purchased the rights of Sajjan Singh by virtue of sale deed Ex. P-29 is already in separate possession of joint property having constructed a house thereupon and thus cannot raise any objection as regards grant of decree for possession in favour of respondent No.1-plaintiff qua separate and specific portion transferred in her name by her father by virtue of sale deed dated 09.05.2006. Moreover, no specific objection qua maintainability was

ever raised in the written statement filed at the instance of appellant-respondent No.1 that suit for possession was not maintainable and it should have been a suit for joint possession.

10. The Hon'ble Supreme Court in Civil Appeal No. 321 of 2019 (arising out of SLP(C) No.5414 of 2017) titled as 'Jai Singh and Ors. Vs. Gurmej Singh' decided on 19.01.2009, has also taken a view that separate possession can be given in joint property, if it doesn't dispossess other co-sharers and if the separate possession is within the limits of share that co-sharer holds in the joint property. The relevant Para No.8 of the same is reproduced hereunder:-

"8. It is thus evident that when a co-sharer is in exclusive possession of some portion of the joint holding he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. Vendor cannot sell any property with better rights than himself. As a necessary corollary when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers."

11. Thus, in view of the above, this appeal is **disposed of**.

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

08.11.2023

Mangal Singh

**(HARKESH MANUJA)
JUDGE**

Whether Speaking / Reasoned :
Whether Reportable :

Yes	No
Yes	No