

RSA-5563-2018 (O & M)
Date of decision: 21.08.2023

...APPELLANTS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

CM-15354-C-2018

For the reasons mentioned in the application, the same is allowed. Delay of 7 days in re-filing the appeal is hereby condoned.

This is an application for exemption from filing certified copy of grounds of appeal filed before the learned First Appellate Court.

Prayer made in the application is allowed subject to all just exceptions.

MAIN APPEAL

By way of present appeal, challenge has been made to the judgments and decrees dated 05.03.2014 and 18.01.2018 passed by the Courts below, whereby, a suit for permanent injunction filed by the appellant-plaintiff has been dismissed.

2. Briefly stating, a suit for permanent injunction came to be filed at the instance of appellants-plaintiffs claiming themselves to be owner to the extent of half share in the suit property along with respondents No.1 to 3 being legal heirs of deceased Banwari. It was stated that the suit property was never partitioned and the respondents were trying to raise construction over a valuable portion of the same to the detriment of the appellants-plaintiffs.

3. Upon notice, the respondents appeared and filed written statement submitting that the suit land already stood partitioned and they were raising construction over the portion in their settled possession being absolute owners/co-sharers thereof.

4. The trial Court vide its judgment and decree dated 05.03.2014 dismissed the suit filed by the appellants-plaintiffs, while holding that in case, the appellants-plaintiffs were having any grievance against respondents-defendants about raising of construction over the land falling in their exclusive possession, they were free to seek their remedy by filing suit for partition. Thereafter, the appellants-plaintiffs filed first appeal, however, the same was also dismissed vide judgment and decree dated 18.01.2018.

5. Aggrieved thereof and impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants vehemently submits that the partition of the joint property was never proved on record and thus, the respondents-defendants, being co-sharers in the suit land, could not be permitted to raise construction over the joint property.

6. I have heard the learned counsel for the appellants-plaintiffs and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellants-plaintiffs. The present suit is a simplicitor suit

for permanent injunction, wherein, the appellants-plaintiffs have prayed for restraining the respondents-defendants from raising construction over the portion of the suit property, which is stated to be joint between the parties, although, the stand taken by respondents-defendants is that the land stood partitioned and they were raising construction over the portion in their settled possession. Nothing material has been pointed out to establish as to how and in what manner, the construction sought to be raised was going to affect the rights of the appellants-plaintiffs, in the suit property or cause any substantial injury to them.

7. *De hors* the proof of partition, in a suit for permanent injunction, even if, for the sake of arguments, it is presumed that the land remains joint between the parties, the respondents-defendants cannot be restrained from raising construction over a portion of it, which is in their exclusive possession as the raising of construction over joint property shall always be subject to partition, which is going to take place in appropriate proceedings/suit to be initiated by the parties and the respondents-defendants would not be entitled to take any benefit of construction having been raised by them in those proceedings unless they are able to prove that the partition already stood effected. Reference in this regard can be made to decisions in ***Mohinder Lal Vs. Madan Lal 2011(5) Law Herald 915 & Jaikaran Sharma Vs. Ram Kumar, 2009(2) CCC-83***. Relevant para No.12 from the judgment in ***Mohinder Lal***'s case (supra) is reproduced hereunder:-

“12. Admittedly, construction had already been raised by the parties over the suit property which is reflected to be the joint property of the parties in the revenue record. Some of the suit property is lying vacant. Since the plaintiff has also raised construction over the joint property, he cannot seek injunction restraining the other co-sharers from raising construction over the suit property. In case any construction is raised by the

parties, the same would be obviously taken into consideration at the time of passing of the final decree for partition. Both the courts below had, thus, rightly declined the relief of permanent injunction and mandatory injunction.”

7. In view of the discussion made hereinabove, finding no illegality or perversity with the judgments and decrees dated 05.03.2014 and 18.01.2018 passed by the Courts below, the present appeal is dismissed.

21.08.2023
manisha

(HARKESH MANUJA)
JUDGE

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