

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

RSA-142-2019 (O&M)

Date of Decision: August 22, 2023

KANWAR SINGH

..... Appellant

Versus

INDER AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vishal Garg Narwana, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 14.03.2016 and 23.08.2018 passed by the Courts below, whereby suit for permanent injunction filed at the instance of appellant-plaintiff has been dismissed.

2. Briefly stating, appellant-plaintiff filed a suit for permanent injunction claiming himself to be co-owner in exclusive possession of Ahata No.113 situated within the Abadi of village Sadrana, Tehsil and District Gurugram besides claiming joint ownership and joint possession of Ahata No.97 as well. It was further pleaded that the respondents-defendants who were in possession of five rooms consisting over the property in question were also trying to raise construction over the vacant portion of the joint property which could result in irreparable loss and injury to the appellant-plaintiff and thus the respondents-defendants be restrained from raising construction over the joint property.

3. In response to notice in the suit, respondent No.2 failed to appear and was proceeded against ex parte whereas respondents

No.1, 3 and 4 filed their joint written statement stating therein that they

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were co-sharers and co-owners of the suit property, however, in exclusive possession of Ahata No.97 situated within the Abadi of Village Sadrana, Tehsil and District Gurugram.

4. Trial Court vide judgment and decree dated 14.03.2016 dismissed the suit filed by appellant-plaintiff while holding that the appellant-plaintiff failed to establish his co-ownership and possession over the suit property forming part of Ahata No.97. It was further held that even if appellant-plaintiff was assumed to be co-sharer, remedy available to him was of filing a suit for partition and not for permanent injunction. Aggrieved thereof, appellant-plaintiff filed First Appeal along with an application, seeking condonation of delay of 75 days in filing the appeal. Though the First Appellate Court vide judgement dated 23.8.2018 declined the application for condonation of delay, however, dealt with the merits of the appeal as well.

5. Impugning the aforementioned judgments and decrees passed by Courts below, learned counsel for the appellant submits that in case the respondents-defendants were permitted to raise construction over the joint property, the same would not only cause prejudice to the rights of appellant-plaintiff but also cause irreparable loss and injury to him. No other argument has been addressed.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellant.

7. The entire case set up in the written statement by the contesting respondents is that they were in exclusive possession of

Ahata No.97. Nothing has been pointed out from the evidence available on record so as to show that the contesting respondents were not in exclusive possession of Ahata No.97. Being in exclusive possession over Ahata No.97, if at all the contesting respondents were raising construction thereupon, unless it was established that the same would cause any prejudice to the rights of the appellant-plaintiff, which was totally missing in the present fact. The construction raised over Ahata No.97 would always remain subject to outcome of the partition proceedings. The appellant-plaintiff has failed to refer to any material to establish as to how and in what manner the construction sought to be raised was going to affect his rights or cause any substantial injury to him.

8. In view of the discussions made hereinabove, finding no illegality or perversity with the judgments and decrees dated 14.03.2016 and 23.08.2018 passed by Courts below, the present appeal is dismissed.

22.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>