

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA No.864 of 2019(O&M)
Date of Decision:16.08.2023

SATINDER SINGH

....Appellant

Versus

PRABHJOT SINGH AND ORS

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. A.S. Manaise, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present appeal has been instituted by the appellant/plaintiff against the concurrent findings of dismissal of suit.
2. Plaintiff filed a suit for permanent injunction restraining the defendants from changing the nature of the suit land or raising any construction thereon without the partition of the land measuring 165 Kanals 2 Marlas bearing Khasra No.83R/14/3(2-16)15(8-0), 16(8-0), 17/2/1(0-1), 102R/5/1(0-1), 13/2(3-12), 14(8-0), 16(8- 0), 17(8-0), 18/1(4-10), 23(7-11), 24(7-0), 25(8-0), 103R/20/2(0-8)121R/3(8-0), 4(8-0), 5(8-0), 121R/6(8-0), 7(7-11), 8(7-11), 13(8-0), 14(7- 12), 17/1(1-5), 83R/24/2(6-4), 102R/4(8-0), 7(8-0), Khewat/Khatauni No. 408/ 621-622, Had Bast No. 211 as per Jamabandi for the year 2008-09 situated at Village Batala Sharki, Tehsil Batala, District Gurdaspur.
3. Learned Trial Court dismissed the suit by making an observation that both plaintiff and defendants were co-shares and no

partition is reflected in the revenue entries. Thus, in view of the settled law that no injunction can be granted against the co-sharer, suit was dismissed.

4. In the First Appeal filed by the plaintiff, Court concluded that plaintiff-Satinder Singh himself alongwith his brother-Jatinder Singh sold out specific portions of Khasra numbers out of the joint property as is being reflected from the sale deeds produced by the defendants as Ex.D2 to Ex.D8. Not only this, learned First Appellate Court made another observation that as per Jamabandi Ex.P2, there are entries of land specifically sold out by the plaintiff and his brother-Jatinder Singh and they delivered the possession of specific Khasra numbers to the vendees.

Thus, Court held that once plaintiff himself has sold specific Khasra numbers out of the joint property and delivered the possession of the specific Khasra numbers to the vendees, as per his own act and conduct, no right vests with him to restrain the other co-sharer from using the property in their possession. In this regard, finding has been given by learned First Appellate Court in paragraph No.13. For the sake of convenience, paragraph No.13 reads as under:

'13. From perusal of the file of the trial court, I find that appellant/plaintiff filed a suit for permanent injunction restraining the respondents/defendants from changing the nature of the suit land or from raising any construction without getting the joint land partitioned which is fully detailed in the head note of the plaint. The appellant/plaintiff has alleged that he is a co-sharer and respondents/defendants are threatening to change the nature of the suit land and want to raise construction over

the valuable portion of the land adjoining to the main road. The respondent/defendant no.2 came present to contest the suit and alleged that land is not joint between the parties. In fact, the land in dispute has already been partitioned amongst the plaintiff, his brother Jatinder Singh and mother Joginder Kaur, who were the original owners of the suit land vide memorandum of family partition dated 13.4.2015. The learned trial court has observed that suit land is joint between the parties and it was not partitioned by way of family partition dated 13.4.2015. However, trial court has dismissed the suit observing that a co-sharer can not claim injunction against other co-sharer. The respondent/defendant did not file any appeal. So, it is not in dispute that suit land is joint between the parties and it was never partitioned as alleged by respondent/defendant. Now the question is that whether appellant/plaintiff being a co-sharer has right to claim injunction or not. The appellant/plaintiff has produced copies of Jamabandies as Ex.P1 and Ex.P2. The respondents/defendants have produced copies of sale deeds as Ex.D2 to Ex.D8 and by way of these sale deeds, appellant/plaintiff Satinder Singh and his brother Jatinder Singh sold specific portions of khasra numbers out of the joint property. In the Jamabandi Ex.P2 also, there are entries of land specifically sold by appellant/plaintiff and his brother Jatinder Singh and they delivered the possession of specific khasra numbers to the vendees. Accordingly, I find that when appellant/plaintiff himself sold specific khasra numbers out of the joint property and delivered the possession of specific khasra numbers to the vendees, then he can not restrain the other co-sharers from using the property in their possession as they like. Even otherwise, if injunction is declined to the appellant/plaintiff, he shall not suffer any irreparable loss as any construction raised by any co-sharer in the joint land shall be subject to final partition of joint land.'

5. This Court does not find any infirmity in the said observation made by First Appellate Court, rather dubious conduct of

the plaintiff and his brother is reflected. While seeking a decree for permanent injunction against the defendants, who had purchased the land from Jatinder Singh, there appears to be no explanation as to why said Jatinder Singh is not even impleaded as party in the proceedings.

Therefore, finding no substance in the plea of seeking injunction as raised by the plaintiff, present appeal stands dismissed.

6. As the appeal has been dealt with on merits, this Court does not find any reason to deal with the the stay applications i.e. CM-1996-C of 2019 and CM-1997-C of 2019, thus, applications also stand dismissed.

[SANJAY VASHISTH]
JUDGE

August 16, 2023
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Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no