



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

RSA-729-2023 (O&M)
Date of Decision:-**23.07.2024**

Rajbir

... Appellant

Versus

Kamlesh

... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :-

Mr. Sandeep Kumar Yadav, Advocate
for the appellant.

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RITU TAGORE, J.

1. Appellant/defendant has been non-suited by the learned Courts below, has preferred this appeal against the judgment and decree dated 16.01.2023 passed by learned Additional District Judge, Rewari, affirming the finding of the learned trial Court judgment and decree dated 16.02.2017, decreeing the suit of the plaintiff. The learned Appellate Court dismissed the appeal of the appellant.

2. For easy reference, parties to the *lis* hereinafter, shall be referred to by their original status in the suit.



3. The plaintiff, instituted a suit for declaration and permanent injunction, *inter-alia* pleading that parties involved are co-sharers in the suit property total measuring 21 kanal 4 marla as detailed in the plaint to the extent of $\frac{1}{2}$ share each. In a partition proceedings, initiated by the plaintiff before the Assistant Collector 1st Grade, Rewari, the defendant suffered a statement that parties are co-sharer and are continuing in possession of their respective shares. The defendant also admitted his cultivating possession on the land bearing Rect. No. 23, Killa No. 15/2 (1-11), 16/1 (6-4), 25(2-17) total measuring 10 kanal 12 marlas, while the plaintiff, in her statement, claimed her cultivating possession on the land bearing Rect. No.23, Killa No.25 (4-18), Rect. No.24, killa no. 21/1(4-12), Rect. No. 48, Killa No. 5/1 (1-2). Accordingly, both the parties requested the authorities to decide the partition proceedings. Based on their statements the revenue authorities, prepared Naksha 'B' dated 20.02.2007. However, later on, defendant resiled from his statement and submitted his objections. The plaintiff alleged that Assistant Collector, 1st Grade, Rewari accepted the objection and prepared New Naksha-B, dated 19.12.2007 in connivance with defendant, completing the partition proceedings. The mutation bearing No.20117 dated 09.06.2008 was sanctioned without hearing the plaintiff, who then challenged the proceedings before revenue authorities. Subsequently, the Commission remanded the case for afresh decision, and the revision preferred by the defendant against the order of the Commissioner before the Financial Commissioner, Gurugram, was dismissed. The plaintiff asserted that based on illegal entry of mutation No.20117 dated 09.06.2008, defendant interferes



in her exclusive cultivating possession of land measuring 10 Kanal, 12 Marla, bearing Rect. No.23, Killa No.25 (4-18), Rect. No.24, killa no. 21/1(4-12), Rect. No. 48, Killa No.5/1 (1-2), total measuring 10 kanal and 12 marla necessitated her to file the suit.

5. Defendant, upon receiving notice from the learned trial Court, appeared and filed written statement, challenging the *locus standi* and lack of a justifiable cause of action for the plaintiff to file and maintain the suit against him. On merits, the defendant admitted the filing of partition petition before the Revenue Authorities and remand of the case by Commissioner Gurugram for a decision afresh on the partition application. However, he pleaded his cultivating possession on the land comprised in Rect. No.23, Killa No.25 (4-18), Rect. No.24, killa no. 21/1(4-12), Rect. No. 48, Killa No.21/1 (4-12), Rect. No. 48, killa No. 5/1 (1-2), total measuring 10 kanal 12 marla, based on the mutation entry No.20117 dated 09.06.2008. By denying the other averments, pleaded for dismissal of the suit for lack of merit.

6. Since parties were at variance, learned trial Court framed following issues:-

- 1) Whether the plaintiff is entitled to decree of declaration as prayed for?
OPP
- 2) Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPD



- 4) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
- 5) Whether the plaintiff has no jurisdiction to entertain the present suit? OPD
- 6) Whether plaintiff has paid the less court fee on the suit ?OPD
- 7) Relief

7. The parties led the evidence, as detailed in the judgment of learned trial Court. On appraisal of the evidence, learned trial Court concluded that plaintiff is in exclusive cultivating possession of the suit land total measuring 10 kanal 12 marla as detailed in the plaint and partly decree the suit of the plaintiff, restraining the defendant from interfering in cultivating possession of the plaintiff.

8. The appeal preferred by defendant against the judgment and decree dated 16.02.2017 of learned trial Court was dismissed by the learned Appellate Court.

9. Being aggrieved by the judgment of learned Appellate Court, the defendant has preferred the instant appeal.

10. I have heard the learned counsel for the defendant-appellant and have gone through the record with his valuable assistance.

11. Learned counsel submits that learned Courts below failed to properly appreciate the evidence, brought on record. In fact, the defendant was put in possession of the suit land based on the partition of the land and mutation No.20117 dated 09.06.2008 was also entered. This evidence



demolished the plaintiff's claim of cultivating possession of the suit land. It is argued that no decree of prohibitory injunction could be passed against the defendant, who is in exclusive cultivating possession of the suit land. Additionally, learned counsel submits that remand of the partition case to the Assistant Collector 1st Grade for a decision afresh resulted the suit land remaining joint between the parties. In view of these facts, no suit of injunction is maintainable by a co-sharer against the other co-sharer, until the land is partitioned by metes and bounds. It is stated that granting a decree of permanent injunction against the defendant by the learned Courts below is clearly unsustainable in the eyes of law. In support of his submission, referred to Gurjant Singh vs. Jagdev Singh and Others, 2020(4) R.C.R. (Civil) 815, wherein it has been observed that '*suit for permanent injunction by a co-sharer against others co-sharers not maintainable unless and until he is able to prove his exclusive possession*'; and Major Singh vs. Joginder Singh, 1994(1) R.R.R. 246, wherein it has been observed that '*co-sharers are entitled to remain in joint possession till their shares are separated by effecting partition*'. Based on these submissions, a prayer is made to accept the appeal, set aside the impugned judgment and decree and dismiss the suit of the plaintiff.

12. The facts as gleaned from the paper book and the impugned judgments, it is made out that parties are disputing their exclusive cultivating possession on the suit land bearing 23//25 (4-18), 24/1/12/1 (4-12) and 48//5/1 (1-12) total measuring 10 kanal 12 marla. According to the plaintiff (PW1) and her witness Rajpal (PW2), the plaintiff is in exclusive cultivating



possession of the above mentioned land and never lost the possession. Contrary, the defendant asserts he got the possession in the partition proceeding and mutation No.20117 dated 09.06.2008 was also entered in this regard.

13. Undisputedly, the parties went for the partition of the land total measuring 21 kanal 4 marla. The parties recorded their statements before the revenue authorities, requesting them to partition the entire joint land, in accordance with their cultivating possession. The defendant, in his statement Ex.P2 admitted his cultivating possession on land 23//15/2 (1-11), 16/1(6-4) 25 min (2-17) total measuring 10 kanal 12 marla. In this statement, he also requested to partition the land as per the possession of the parties.

14. It is also an admitted fact that plaintiff challenged the partition proceedings and Commissioner, Gurugram vide order Ex.P4, set aside the partition proceedings and remanded the case back for a fresh decision. The revision filed by defendant before Financial Commissioner was dismissed.

15. Learned counsel for the appellant-defendant was unable to point out any factual error committed by the learned Courts below, while narrating and appreciating the facts. The learned counsel for the appellant-defendant also failed to dispute, the recording of the statement Ex.P2 by defendant before the revenue authorities, in the partition proceedings, admitting his exclusive cultivating possession on land other than the suit land, exclusively possessed by the plaintiff. The counsel for the appellant was unable to deny the passing of order (Annexure P-4), by Commissioner, Gurugram, setting aside the entire partition proceedings including the sanction of mutation



No.20117 dated 09.06.2008 and remanding the case to Assistant Collector 1st Grade to decide afresh, and dismissal of the revision preferred by defendant vide order dated 27.01.2016 (Annexure P-5) passed by Financial Commissioner, Haryana.

16. In light of these admitted facts, the defendant's reliance on mutation No.20117 dated 09.06.2008 is meaningless and of no consequence. The defendant thus cannot be permitted to plead that he is in cultivating possession on the suit land bearing No.23//25 (4-18), 24/1/12/1 (4-12) and 48//5/1 (1-12) total measuring 10 kanal 12 marla. His statement Ex.P2, does not establish his exclusive cultivating possession on the above mentioned land; it rather, affirms the plaintiff's version that she remained in exclusive possession of the suit land. Law is settled that a co-sharer, when prove to be in separate cultivating possession of a part of the joint holding, is entitled to protect his/her exclusive cultivating possession until the land is partitioned by metes and bounds. In this regard, reference can be made to the decision in **Jangjit Singh vs. Niranjn Singh & Ors. 2015 Vol-II LJR 481.**

17. No other point urged.

18. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

19. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

20. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

21. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

23.07.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

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