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

**C.M.No.12538-C-2018 in/and**
**RSA No.2572 of 2003 (O&M)**
**Date of Order:08.11.2024**

**Harbans Kaur and others**

**.Appellants**

**Versus**

**Baldev Singh and another**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:** **Mr. Gurnam Singh, Advocate**
**for the appellants.**

**Mr. M.L.Saggar, Sr. Advocate, with**
**Ms. Arman Saggar, Advocate**
**for the respondents.**

***ANIL KSHETARPAL, JUDGE***

***C.M.No.12538-C-2018***

1. With the consent of the learned counsel representing the parties, the appeal is taken on Board today itself for final disposal.

2. CM stands disposed of.

***MAIN***

3. While assailing the concurrent findings of fact arrived at by the courts below, the plaintiffs have filed this regular second appeal.

4. The plaintiffs filed a suit for grant of decree of declaration that they have become owner of 3 bighas and 5 biswas land after having perfected their title by way of adverse possession along with consequential relief of permanent injunction.

5. Sh. Phuman Singh and Sh. Chanan Singh were brothers. They were co-sharers in the land measuring 9 bighas and 16 biswas. On the death

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of Sh. Phuman Singh, his share was inherited by Sh. Amar Singh, his son, whereas Sh. Chanan Singh bequeathed his share in favour of Sh. Karam Singh, adopted son of Sh. Chanan Singh. Sh. Karam Singh was biological son of Sh. Phuman Singh. After the death of Sh. Amar Singh the land was inherited by his widow and five sons, who are the plaintiffs-appellants. In the revenue record, Sh. Amar Singh and Sh. Karam Singh were recorded as co-sharers. Sh. Karam Singh was owner to the extent of 1/3rd share in the joint khewat. He sold the same in favour of Sh. Baldev Singh, defendant no.1 (respondent herein) vide sale deed dated 20.12.1993. Thus, Sh. Baldev Singh stepped into the shoes of Sh. Karam Singh and and became co-sharer. On 12.02.1994, the plaintiffs filed the suit which was contested by the defendants. Both the courts dismissed the suit after recording that the plaintiffs have failed to prove that they had perfected their title by way of adverse possession. It was held that the parties were co-sharers and possession of some of the co-sharers does not amount to ouster of other co-sharers. The court also held that the possession of one co-sharer is deemed to be possession of all and on behalf of other co-sharers who are not in possession.

6. This appeal was admitted for regular hearing in the year 2003, in the meantime, Sh. Karam Singh filed a petition under the Punjab Land Revenue Act, for partition of the joint land which was decreed on 26.12.2012, against which the appeal was dismissed by the Collector on 18.03.2013, which was affirmed by the Commissioner on 30.09.2015. The second revision filed by the plaintiffs has been dismissed for non-prosecution on 14.09.2023.

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7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the digital copy of the lower court record.

8. The learned counsel representing the appellants submits that Sh. Karam Singh was residing in Ambala and he was never in possession of any part of the property. He submits that Sh. Amar Singh and thereafter the plaintiffs being exclusive owner of the property have perfected their title by way of adverse possession. In the alternative, he submits that the plaintiffs are atleast entitled to decree for injunction as they are in exclusive possession of the property as per girdawari.

9. Per contra, the learned counsel representing the respondents submits that the parties were co-sharers and the possession to the respondents could not be delivered because of interim orders granted by this Court. He submits that the prayer for injunction has become infructuous because Sh. Karam Singh has filed execution petition to get possession of his share of land in the partition proceedings. At this stage, the learned counsel representing the appellants submits that Sh. Baldev Singh never became party in the partition proceedings and Sh. Karam Singh has no locus to file the partition proceedings after having sold the land.

10. This court has considered the submissions of the learned counsel representing the parties.

11. The partition of joint khewat during the pendency of the appeal is not in dispute. As far as the plaintiffs' claim for having perfected their title by way of adverse possession, it may be noticed that the plaintiffs have failed to prove ouster of Sh. Karam Singh or Sh. Baldev Singh. Both the

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courts have found that the possession of the plaintiffs was in a representative capacity being co-sharer. Merely because a particular co-sharer is not in possession and is residing out of the village is not sufficient to prove ouster. Moreover, in this case, the property was jointly owned by the members of the same family.

12. Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of fact with regard to plaintiffs' failure to prove their ownership by way of adverse possession.

13. With regard to the relief of injunction, there is a subsequent development. The property has been partitioned and instrument of partition has been prepared. There is a severance of status between the co-sharers. Sh. Karam Singh or Sh. Baldev Singh are entitled to take possession in implementation of instrument of partition. Hence, the prayer for injunction has become infructuous.

14. Another argument of the appellants' counsel is with respect to failure of Sh. Baldev Singh to join partition proceedings. The learned counsel representing the respondents submits that Sh.Baldev Singh was respondent no.4. In any case, Sh. Baldev Singh has stepped into the shoes of Sh. Karam Singh. The instrument of partition has already been prepared which has become final.

15. Keeping in view the aforesaid facts, even if Sh. Karam Singh originally filed the partition proceedings, still the severance of status between the co-sharers has taken place.

16. Hence, no ground to interfere is made out.

17. Dismissed.

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18. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)**
**JUDGE**

**November 08, 2024**
**nt**

**Whether speaking/reasoned : Yes/No**
**Whether reportable : Yes/No**

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