



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

**RSA-2374-2019 (O&M)
Pronounced on: 07.05.2024**

Rajwinder Singh and others

...Petitioners

Versus

Sukhwant Singh @ Sant @ Sonu and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. R. K. Arya, Advocate
for the appellants.

RITU TAGORE, J.

1. This appeal has been preferred by appellants-plaintiffs against the judgment and decree dated 21.01.2019 passed by learned Additional District Judge, Gurdaspur whereby learned Appellate Court affirmed the findings recorded by learned Civil Judge (Junior Division), Gurdaspur vide judgment and decree dated 17.02.2017.

2. For the convenience sake, the parties shall be referred to as per their status before the learned trial Court.

3. The relevant facts necessary for adjudicating this appeal are as under:-

The plaintiffs filed a suit with assertion that they are owners in exclusive possession of the suit property i.e., a house and a *Haveli* measuring 1 kanal 11 marlas, comprised in khewat No.425 Khatoni No.778, khasra No.118(2-2) 121 (0-5) 299(0-6) 308(3-12) total measuring 6 kanals 5 marlas, situated in revenue estate of village Bhambli H B No.379 Tehsil and



District Gurdaspur as per Jamabandi for the year 2008-09, marked with letter ABCDEFG in the site plan attached and bounded with the boundaries as detailed in the head note of the plaint.

4. It is claimed that land measuring 13 marla on which suit property i.e house and *Haveli* is built, fell to the share of their father Sawinder Singh. After the death of their father, the plaintiffs purchased land measuring 18 marlas from Harjinder Singh son of Charan Singh vide sale deed dated 20.08.2010. They are in possession of 1 kanal 11 marlas out of total land 6 kanals 5 marlas. The plaintiffs are using the site marked DEFG for storing manure, cow dung cakes, kitchen garden etc. They have also planted a *Shehtoot* tree in *Haveli* in dispute. The sullage of the house of plaintiffs also drains out in the disputed site.

5. It is further the case of the plaintiffs that defendant No.2 and his other brother Kuldeep Singh were given land of their share on the other side of the village, and they have constructed their houses and *Haveli* and are living with their families although they possess more land than their actual share. It is claimed that defendants have no right, title and interest in the suit property nonetheless issue threats to dispossess them forcibly and illegally from the suit land that constrained them to file the suit.

6. On being put to notice, the defendants appeared in the suit, filed their written statement and raised the plea of non-maintainability of the suit, having filed on false and frivolous facts. The site plan filed by plaintiffs has also been challenged as incorrect and not depicting the actual position of the spot. They denied ownership and possession of the plaintiffs on the house and *Haveli* marked ABCDEFG, as reflected in the site plan, measuring 1 kanal 11 marlas. It is stated that plaintiffs have already sold



plot 0-5 marla situated in the *LalLakir* in favour of Gurdev Singh son of Thakur Singh resident of village Bhumbli. They denied that 13 marlas land fell to the share of Sawinder Singh in a family partition. Instead, pleaded that plot defined with letter EFGD is owned and possessed by them. The plaintiffs encroached upon the land, by raising construction of a house. It is pleaded that defendant No.2 raised construction of his house in khasra No.118. It is stated that Sawinder Singh, Ajit Singh, Kuldip Singh sons of Lakhwinder Kaur, Harwinder Kaur daughters of Surain Singh are owners of $\frac{1}{4}$ th share in khasra No.118, 121, 299 and 308 situated in village Bhumbli, Tehsil and District Gurdaspur, as entered in the jamabandi for the year 2008-2009. On the above averments, defendants prayed for the dismissal of the suit, being meritless.

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

- “1. Whether the plaintiffs are in exclusive possession over the property in dispute? OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP
3. Whether the plaintiffs have concealed material facts from the Court? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Relief.”

8. The learned trial Court, called the parties to present their evidence. Parties led their evidence as detailed in the judgments of learned Courts below. Upon appreciation of the evidence, learned trial Court dismissed the suit observing that plaintiffs failed to prove their exclusive ownership and possession over the suit property as claimed. The revenue



entries record plaintiffs as co-sharers in the suit property, along with other co-sharers. The learned trial Court also observed that plaintiffs did not implead other co-sharers and concealed the fact of filing of a suit of declaration by other co-sharers claiming their 1/5th share in the suit land. The appeal preferred by the plaintiffs was also dismissed by learned First Appellate Court, upholding and affirming the findings of learned trial Court.

9. Being aggrieved by the findings of Courts below, plaintiffs have preferred this appeal.

10. Learned counsel for the appellants urged that learned Courts below have failed to appreciate the evidence led by the appellants in correct perspective, whereas appellants-plaintiffs led ample evidence oral and documentary to establish their exclusive ownership and possession over the suit property, a house and *Haveli*, marked with letter ABCDEFG measuring 1 kanal 11 marlas, fully detailed and described in the plaint and substantiated by their witnesses. Learned counsel stated that inferences and conclusion drawn by the learned Courts below are imaginary based on conjectures and surmises and are beyond the evidence. The learned counsel stated that plaintiffs have not concealed filing of the suit by the respondents, as said suit was for declaration and present suit is for permanent injunction. Therefore, findings of previous suit have no relevancy to the present case, which is filed by the appellants-plaintiffs to restrain the respondents/defendants from interfering in their lawful and peaceful possession forcibly and illegally. A prayer is made to reappraise the evidence and allow the appeal.



11. I have gone through the findings of the learned Courts below, in the light of the pleadings of the parties and evidence and find no illegality in the same, calling for any interference for the reasons recorded below.

12. The plaintiffs brought the suit for permanent injunction, pleading that they are owners and in exclusive possession of the suit property i.e a house and *Haveli* marked with letter ABCDEFG measuring 1 kanal and 11 marlas as detailed in head note and reflected in the site plan (Annexure P-1). They claimed that 13 Marlas fell to the share of their father, Sawinder Singh, in family partition and 18 marlas were purchased by them from Harjinder Singh son of Charan Singh, and as such they are owner of 1 kanal 11 marlas of land. However, the revenue record (Ex. P-2) relied by them, failed to substantiate their version as same does not reflect the ownership and possession of the plaintiffs, as claimed by them. Both the Courts below categorically observed that revenue entries depict Sawinder Singh (father of plaintiffs), Ajit Singh (defendant No.2), Kuldip Singh, Lakhwinder Kaur and Harwinder Kaur children of Surain Singh, as co-sharer in the suit land. The plea of family partition and exclusive possession in pursuance thereto is not established from the record.

13. Further, learned Courts below observed that the claim of plaintiffs that they are entitled to 1 kanal 11 marlas is not made out as total land is 6 kanals 5 marlas and five co-sharers have claim over said land. By referring to judgment and decree Ex.D-2 and D-3, passed in a suit for declaration, filed by Lakhwinder Kaur and Harwinder Kaur, claiming their 1/5th share in the suit land, the learned Courts below observed that this belies the version of the plaintiffs of relinquishment of share by Lakhwinder Kaur and Harwinder Kaur in their favour. The Courts below also observed



that plaintiffs failed to prove the existing position of the suit property by failing to prove the site plan (Ex.P-1) by examining its author. The Courts below observed that plaintiffs are not entitled to the decree of permanent injunction against the co-sharers once having failed to prove their exclusive possession in the suit property on the basis of alleged family settlement. Thus, in the light of evidence discussed above, it is held that findings recorded by learned Courts below are based on evidence. The learned counsel failed to challenge the above material findings of facts, being contrary to the evidence on record. In fact, learned counsel failed to point out any misreading or misunderstanding or missing out of any material piece of evidence by the learned Courts below before ruling against the plaintiffs.

14. All the facts and circumstances discussed above, when taken together makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity or absurdity.

15. No other point was urged.

16. For the reasons stated above, I do not find any illegality or infirmity in the concurrent findings recorded by the learned Courts below, which are based on application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law. The findings are affirmed, accordingly. Resultantly, there is no merit in the appeal and same is, hereby, dismissed.

17. Pending miscellaneous applications, if any, also stand disposed of accordingly.

(RITU TAGORE)
JUDGE

07.05.2024
Rimpal

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