

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 23.7. 2009

R.S.A.No. 134 of 2003

Santokh Singh and another

.....Appellants

Versus

Darshan Singh and others

.....Respondents

R.S.A.No. 135 of 2003

Santokh Singh and another

.....Appellants

Versus

Darshan Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Athwal, Advocate,
for the appellants.

Mr.O.P.Hoshiarpuri, Advocate,
for the respondents No.1 and 2.

SABINA, J.

Vide this judgment, RSA Nos. 134 and 135 of 2003

would be disposed of as the civil suits, out of which the said appeals had arisen, were consolidated and were disposed of vide common judgment.

Plaintiffs Santokh Singh etc. filed a suit for permanent injunction restraining the defendants from interfering in their peaceful cultivating possession. Defendants Darshan Singh etc. also filed a suit against them for declaration. Vide judgment and decree dated 19.1.1999 passed by the Civil Judge (Jr.Divn.), Jalandhar, the suit filed by Santokh Singh etc. was decreed, whereas, the suit filed by Darshan Singh etc. was dismissed. In appeals, the findings of the trial Court were reversed by Additional District Judge, Jalandhar vide judgment and decree dated 24.10.2002. The suit filed by Santokh Singh etc. was dismissed, whereas, suit filed by Darshan Singh etc. was decreed. Hence, the present appeals.

Brief facts of suit No.203/96 filed by Santokh Singh etc., as noticed by the trial Court in para Nos. 2 and 3 of its judgment, are as under:-

“2. The land measuring 15K-12M as fully detailed in the head note of the plaint is owned jointly by the parties to the suit and others. The plaintiffs have 2K-9M land in i.e. 1 Kanal out of khasra No.45//8, 10 khabit out of khasra No.45//6 min and 19 marlas out of khasra No.45//6 min. That the defendants No. 1 and 2 are owners of 1 kanal land out of khasra No.45/B and

defendant No.8 is in possession of 1 kanal area as mortgage out of khasra No.45//6 min and 45//6 min. That defendants are threatening to dispossess the plaintiffs from the land under the cultivating possession of the plaintiffs which is 2K-9M. The defendants were requested not to do so but they refused, hence, this suit.

3. On notice, defendant No.1 appeared and filed written statement contesting the suit. It is denied that plaintiff is owner of 2K-9M of land out of the total land. It is also denied that the plaintiff has got any right, or interest in the suit land. It is contended that the defendants are absolute owner of the suit properties and part of the suit property is in possession of the plaintiffs. It is further contended that the defendants being in actual physical possession of the total land, the question of dispossessing the plaintiffs does not arise. All other allegations are denied. It is prayed that the suit be dismissed. Defendants No. 2 and 3 did not appear to contest the suit and were proceeded against ex-parte vide order dated 20.10.95 passed by my learned predecessor.

On the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiffs are owners in joint possession of land comprised in Khasra No.45//8, fully

described in the head note of the plaint? OPP

2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Relief. ”

However, issue No.1 was later on amended vide order dated 16.12.98 and was reframed as under:-

Issue No.1:- “ Whether the plaintiffs are the owners in joint possession of the land to the extent of 2 kanal 9 marlas in the land comprised in Khasra No.45//8, 45//6 min and 45//5 min of Khewat No.365. Khatauni No.519, 523 and 524 as detailed in the head note of the plaint ?
OPP.

In brief, the facts of suit No.173/96 filed by Darshan Singh etc., as noticed by the trial Court in para Nos. 6 to 8 of its judgment, are as under:-

“6. Charna defendant had a share to the extent of 10K-1M in the suit land. He sold 9K-6M from his share from time to time which ultimately came to the plaintiff through registered sale deeds in their favour. As such, the plaintiffs acquired 9K-6M of land from the share of

Charna, defendant in the suit property. Charna was left with only 15 marlas of share in the suit property. That the sale by Charna from his share is duly reflected in the revenue record. The plaintiffs also purchased land from other co-sharers from time to time and as such, their holding in the suit property continued increasing. That name of Charna also continued existing in the column of ownership of jamabandi as he was left with 15 marla of land. That taking advantage of his name in the jamabandi, Charna defendant executed sale deed in favour of his son Bachitter Singh regarding the land measuring 10K-1M with malafide intention in order to prejudice the right of the plaintiff. That Charna defendant could not pass title beyond 15 marlas of land as he had already sold 9 kanal-6 marla to the plaintiffs. That Bachitter Singh started declaring himself to be owner of 10 kanal 10 marla land which is totally wrong. The plaintiffs are also in joint possession of the suit property along with other co-sharers who have been impleaded as defendants in the present suit. That Bachittar Singh defendant threatened to dispossess the plaintiff from the land under their possession. He was asked not to do so and admit the claim of the plaintiffs but he refused, hence this suit.

7. On notice, defendant's no. 3 and 4 did not appear to contest the suit and were proceeded against ex-parte. Defendant No.7 was reported to be dead. Defendants No.1 and 2 filed written statement contesting the suit. A number of preliminary objections were taken that the suit is not maintainable in the present form and is also bad for mis-joinder and non-joinder of necessary parties. That defendants No.1 and 2 are owner in possession of the land in question which they purchased from Bachittar, Maggar and Rattu. On merits, the allegations as made in the plaint are denied in toto. It is also contended that the plaintiffs have got no right, title or interest in the suit property. It is prayed that the suit be dismissed.

8. Defendants No. 5 and 6 filed separate written statement taking the preliminary objections that the suit is based on the false facts and have no cause of action to file the same. On merits, it is denied that Charna was a co-sharer having 10K-10M land. It is contended that he being not owner of this much land could not execute any sale deeds in favour of the plaintiffs and the sale deed if any, executed by Charna of this much land are forged and fabricated. It is further contended that the plaintiffs have not given any details of the area

purchased by them, from other co-sharers. It is contended that the defendants are exclusive owner of 7K-16M in Khasra No.45/8 and 45/6. All other allegation are denied. It is prayed that the suit be dismissed.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiffs are entitled to declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to the grant of permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Relief. ”

I have heard learned counsel for the parties and have gone through the record available on the file.

The substantial questions of law that arise in these appeals are “whether the judgment and decrees of the lower Appellate Court are perverse and illegal and whether lower Appellate Court has drawn wrong inferences from the proved facts on record?”

Appellants had filed a suit for permanent injunction restraining the defendants from interfering in their exclusive possession over the property in dispute. On the other hand, Darshan Singh and Sarwan Singh filed a suit seeking decree of joint possession over the suit property. Both the parties led their evidence before the trial Court in support of their case. In order to establish their possession over the suit property, plaintiffs Santokh Singh and Satnam Singh proved on record the copies of jamabandis. A perusal of copies of jamabandis on record reveals that the plaintiffs are in exclusive possession of the suit property.

It has been held by this Court in the case **Sant Ram Nagina Ram vs. Deva Ram Nagina Ram and others AIR 1961 PB 528** as under:-

- “(1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order

to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co- owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

9. Where a portion of the joint property is by

common consent of the co-owners reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered. Case law reviewed.”

It is a settled proposition of law that a co-sharer, who is in exclusive possession of the joint holding is entitled to protect his possession. In these circumstances, learned trial Court had rightly decreed the suit of the appellants Santokh Singh and Satnam Singh for permanent injunction restraining the defendants from interfering in their peaceful possession over the land in question. Learned lower Appellate Court has, however, based its findings against the proved facts on record and has held that a co-sharer cannot seek injunction against other co-sharer without examining the fact that, in fact, the plaintiffs were in exclusive possession of the property in dispute. In a suit for permanent injunction, the Courts are only required to see as to whether the plaintiffs are in possession of the suit property or not and in case the plaintiffs are successful in proving their possession over the suit property, the suit for permanent injunction is liable to be decreed. Hence, the impugned judgment and decrees passed by learned Additional District Judge are liable to be set aside and the suit of the plaintiffs/appellants is liable to be decreed.

So far as the suit filed by Darshan Singh and Sarwant Singh is concerned, they have filed a suit for declaration that they were owners in joint possession of the suit land. However, a perusal of the revenue record reveals that there are many other co-sharers apart from the defendants in the suit property and in all the khasra numbers, the co-sharers are not the same. In these circumstance, the suit of plaintiffs Darshan Singh and Sarwan Singh was liable to be dismissed as they have failed to implead all the co-sharers in the suit. The said fact has not been gone into by the learned Additional District Judge and by going into unnecessary facts, the suit of the said plaintiffs Darshan Singh and Sarwan Singh has been decreed.

Thus, the findings of the learned Additional District Judge are perverse and against the facts on record. Hence, the substantial questions of law that arise in these appeals stand answered accordingly.

Consequently, these appeals are allowed. The impugned judgment and decrees passed by the lower Appellate Court are set aside and the judgment and decrees passed by the trial Court are upheld. Accordingly, the suit of plaintiffs Santokh Singh and Satnam Singh is decreed as prayed for, whereas, the suit filed by Darshan Singh and Sarwan Singh is dismissed.

**(SABINA)
JUDGE**

July 23, 2009
anita

