



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

125

RSA No.2385 of 2019 (O&M)

Reserved on : 09.12.2024

Date of Decision: 17.12.2024

Joginder Singh

....Appellant

VERSUS

Harbhajan Kaur & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bhag Singh, Advocate for the appellant.

ALKA SARIN, J.

CM-6369-C-2019

1. For the reasons mentioned therein, the application for condonation of 69 days delay in refiling the appeal is allowed.

RSA-2385-2019

2. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 20.07.2016 passed by the Trial Court and the judgment and decree dated 08.10.2018 passed by the First Appellate Court dismissing the suit filed by the plaintiff-appellant.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction averring that he was co-owner in possession to the extent of 8/9 share in the suit land and had sown his crops on it. As per the plaintiff-appellant the defendant-respondents had purchased a share in the suit land vide sale deed dated 21.12.2011 and now the defendant-respondents and their husbands were bent upon to dispossess

the plaintiff-appellant from the suit land forcibly and illegally without any right. The plaintiff-appellant being in exclusive possession of the suit land as co-sharer had a right to retain possession till partition. Hence, the suit for permanent injunction. In their written statement the defendant-respondents raised preliminary objections regarding locus standi, maintainability, concealment of true and material facts, cause of action, verification, jurisdiction, non-joinder of necessary parties, court fee, etc. On merits it was submitted that the parties were co-sharers in the suit land and that the plaintiff-appellant was not in exclusive possession. Rather, the defendant-respondents were in possession of part of the suit land and had also sown their crop. It was also the stand taken that an application for correction of the khasra girdawari was pending before Assistant Collector Second Grade, Shahabad which was being contested by the plaintiff-appellant. The defendant-respondents were in possession since the date of purchase from their vendors and that the plaintiff-appellant was bent upon to take forcible possession thereof and that the defendant-respondents had never tried to dispossess the plaintiff-appellant forcibly and illegally. It was denied that plaintiff-appellant was in exclusive possession of the suit land as co-sharer. No replication was filed by the plaintiff-appellant.

4. On the basis of the pleadings of the parties the following issues were framed:

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

3. Whether the plaintiff has no locus-standi to file and maintain the present suit ? OPD
4. Whether the suit is bad for non-joinder of necessary parties ? OPD
5. Whether the plaintiff has concealed the true and material facts from this Court ? OPD
6. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 20.07.2016. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree 08.10.2018. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellant has contended that both the Courts below have erred in dismissing the suit of the plaintiff-appellant. It is submitted that the possession of the plaintiff-appellant stood established and as such he was entitled to the grant of permanent injunction. As per the learned counsel the impugned judgements and decrees are based upon conjectures and surmises and cannot be sustained.

7. I have heard learned counsel for the plaintiff-appellant.

8. Both the Courts have reached concurrent findings of fact that the plaintiff-appellant is not in exclusive possession of the suit land. The parties are co-sharers and the plaintiff-appellant can always seek partition. The First Appellate Court found that *“Therefore, plaintiff's claim that he was in exclusive possession of entire 8 kanals land comprised in khasra No.25//8/2 and 9/1/2 cannot be accepted. Stand of defendants regarding possession of khasra No.9/1/2 is proved from cross-examination of plaintiff's*

solitary witness Gurmit Singh. The report of Local Commissioner DW-2 Sham Lal, retired Tehsildar, copy of which is Ex.D18 that defendants were in possession of 19.0 feet x 270 feet of southern side of khasra No.25/8/2 and 9/1/2 i.e. 19.5 marlas over which they had sown crop of potatoes is substantiated by cross-examination of plaintiff's witness Gurdip Singh". It was further held that "Since plaintiff is not in exclusive possession of suit land, in view of section 41 (h) of the Specific Relief Act plaintiff cannot seek permanent injunction restraining defendants from interfering in his possession. Equally efficacious remedy available to the plaintiff is to seek partition of the suit land rather than an injunction restraining other co-shares from interfering in his possession". Learned counsel for the plaintiff-appellant has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No cogent and reliable evidence has been pointed out to convince this Court to take a divergent view from the one taken by both the Courts. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO