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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4976-2019 (O&M)
Reserved on : 18.01.2024
Date of decision : 23.01.2024

Sharanjit Singh ... Appellant(s)

Versus

Davinder Singh and Others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Gupta, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings returned by the Trial Court as well as the First Appellate Court whereby his suit for permanent injunction has been dismissed.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondents from interfering in his peaceful possession and from dispossessing the plaintiff-appellant from land measuring 1 kanal 19 marlas in Khasra No.17/11/2 (1-13 min lehnda) and 18/15/3 (0-6) as entered in the jamabandi for the year 2006-07 situated at village Shehbazpur, Tehsil and District Tarn Taran. The plaintiff-appellant approached the Court stating that

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he had purchased 2 kanals 1 marla of land from Gian Singh vide a registered sale deed dated 02.08.2010 and was in possession thereof. It was averred that the Khasra Girdawari pertaining to the said land is also claimed to have been recorded in the name of the plaintiff-appellant vide order dated 20.5.2011 passed by the Court of Assistant Collector IInd Grade. However, the defendants Nos.1 and 2 without having any right in either of the said khasra numbers filed a suit for permanent injunction in which the said defendants in connivance with defendant No.3 procured the order of status from the Court of Civil Judge Senior Division at Amritsar on 10.09.2011 in which suit the application of the plaintiff-appellant for being impleaded as a party was dismissed. Thus, in order to protect his possession by way of an independent suit, the plaintiff-appellant sought the relief of permanent injunction to restrain the defendant-respondents from causing any interference in his peaceful possession in respect of the suit land. The defendant-respondents in their written statement raised preliminary objections about maintainability of suit and locus standi. On merits it was contended that originally one Gurmit Kaur and her son Khazan Singh were the co- sharers in the joint Khata of land measuring 122 Kanal 4 Marlas and Gian Singh was a stranger to the said joint Khata and he was not in possession of any part of the said joint Khata but was introduced as a co-sharer for the first time on the basis of sale deed dated 26.9.2008 in respect of land measuring 41/2454th share coming to 2 Kanal 1 Marla which was in possession of defendant No.2 being mortgagee and therefore the defendant No.3 could not have alienated any specific khasra number. It was further stated that they had filed a suit for permanent injunction in respect of the

land measuring 5 Kanal 19 Marlas bearing Khasra No.17/11/2 (5-11) and 18/15/3 (0-8) against Gian Singh and Gurmeet Singh from whom the plaintiff-appellant claims to have got the possession of the suit land and the said suit was decreed on 15.02.2012. The defendant-respondents claimed themselves to being in possession over the suit land prior to the filing of the present suit and their title and possession had been upheld vide judgement and decree dated 15.02.2012. Replication was filed and the following issues were framed :

1. Whether the plaintiff is entitled to the relief of Permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
5. Relief.

3. The Trial Court, on the basis of the pleadings of the parties and the evidence led, dismissed the suit vide judgment and decree dated 21.08.2015. Aggrieved by the same, an appeal was preferred which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 09.07.2019. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant is the owner of the suit property by way of sale deed dated 02.08.2010 and that the defendant-respondents are interfering in his possession and hence the suit ought to have been decreed.

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

6. In the present case, admittedly, the land is in joint *khata* and has not been partitioned. Both the Courts have concurrently returned a finding that the sale in favour of the plaintiff-appellant was a share of 41/2454th of the total land measuring 122 kanals 14 marlas. The defendant-respondents are admittedly co-sharers. The learned counsel for the plaintiff-appellant has not been able to show as to how the present suit would be maintainable against co-sharers. A Full Bench of this Court in the case of **Bhartu Vs. Ram Sarup [1981 PLJ 204]** has held that 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. A Division Bench of this Court in the case of **Bachan Singh V/s Swaran Singh [2000(3) RCR (Civil) 70]** has held as under:-

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that :

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are

detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

7. Learned counsel for the plaintiff-appellant has not been able to convince this Court as to how the present suit for injunction would be maintainable when the plaintiff-appellant has a remedy to seek partition.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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