



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

RSA-3625-2018 (O&M)

Date of Decision:-**31.07.2024**

MANGE RAM

... Appellant

Versus

RAJPAL AND ORS

... Respondents

-.-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Sumit Sangwan, Advocate
for the appellant.

RITU TAGORE, J. (Oral)

1. Being aggrieved by the concurrent findings returned against him, appellant-plaintiff has preferred this Regular Second Appeal against the impugned judgment and decree dated 08.01.2018, passed by learned Additional District Judge, Charkhi Dadri, affirming and upholding the judgment and decree dated 04.12.2017, passed by learned Civil Judge (Senior Division), Charkhi Dadri, in civil suit No348 of 2015, titled as Mange Ram vs. Rajpal and Others.

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

3. The plaintiff instituted a suit against the respondents (defendants) with averments that he and other persons are co-shares and in joint possession of the land bearing Khasra No.318 forming part of Khewat



No.18/18 Khatoni No.56 as per the jamabandi for the year 1955-56 situated in the revenue estate of village Jhojhu Khurd (the property as detailed above shall hereinafter be referred to as the suit land).

4. The brief facts, as stated in the plaint, are that suit land is *Banjar Kadim*, and is used by the plaintiff and other co-sharers for tethering cattle. The defendants are mortgagee on some part of the suit land but have never been in cultivating possession of the land. It is further averred that about 50-60 green trees were existing on the suit land, out of which defendants felled about 15-20 such trees and sold some of the trees in an illegal manner. It is stated that about 40 trees of '*Kikar*', '*Janti*' and '*Beri*' still exists on the suit land and defendants intend to cut and sell them. The plaintiff and other, requested the defendants not to cut trees standing on the suit land but they refused to accede to their legitimate requests. It is also stated by the plaintiff that a case for partition with respect to the suit land and other land is pending between the parties. In these facts, the plaintiff prays for a decree of permanent injunction to restrain the defendants from cutting trees standing on the suit land.

5. Upon being put to notice by the learned trial Court, the defendants No.2, 4 and 5 filed a joint written statement and contested the suit on various pleas; *inter alia* on the ground of maintainability, *locus-standi* and suppression of material facts from the Court etc. On merits, the contesting defendants pleaded that they have been in possession of the suit land measuring 2 Bigha 16 Biswa for the last 25 years, since the time of their forefathers, and the trees standing on the suit land belong to them.



6. Defendants claim that one Ratna son of Maman, the owner of the suit land, sold his share in favour of Arjun and Satyavir, who then sold their share to the ancestors (Risal Singh, Gyani and Bhagwana) of the present defendants and also handed over the actual physical possession of the land. Thereafter, their ancestors constructed a '*Gher*' over the suit land. Defendants further assert that in litigation involving their ancestors, they were declared the owners of the suit land based on adverse possession and mutation No.560 dated 18.07.1994 was entered and sanctioned, based on the judgment and decree 15.05.1993 passed in their favor. Since then, they have been in possession of the suit land, maintaining full right to cut the trees, they planted. They deny felling any trees from the suit land. Further, they claim to use the suit land for tethering their cattle and storing their agricultural appliances on the suit land. They deny any part of the suit land is mortgaged to them. It is also pleaded that plaintiff had filed complaints before the Forest Department and Police Department against them but those complaints were found to be false. All the suits filed by the plaintiff over the time have been dismissed, except for one appeal, which is pending adjudication.

7. It is claimed that the plaintiff has concealed the material facts from the Court regarding the previous litigation. It is stated that in a suit for permanent injunction, instituted by the plaintiff against present defendants No.1 to 4 and the father of defendant No.5, titled as Amar Singh and another Vs. Giani Ram and others bearing civil suit No.526 of 1995, the defendants were found in exclusive possession over the suit land as co-sharers, having



enclosed the land with their boundary wall. The appeal bearing No.201 of 1998 preferred against the judgment and decree was dismissed on 20.08.2002. In said suit, local commission was appointed and the defendants were found in possession of the suit land. It is pleaded that plaintiff also filed a civil suit No.347 of 15.04.1987 and was not found in possession of khasra No.318 measuring 2 Bigha 16 Biswa (the suit land) . Yet, another Civil Suit No.139 of 2002 for partition and permanent injunction, filed by plaintiff was dismissed and later plaintiff on remand by learned Appellate Court withdrew the suit. Based on these averments defendants claim that the plaintiff has no concern with the trees standing on the suit land, planted and grown by them. With the aforesaid averments, prayed for dismissal of the suit. Defendants No.1 and 3, adopted the written statement filed by defendants No.2, 4 and 5.

8. No replication was filed by the plaintiff to the assertions of the defendants. Since the parties were at variance the following issues were framed by the learned Court on 17.11.2015:-

- i. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
- ii. Whether the suit is not maintainable in the present form? OPD
- iii. Whether the suit is false and frivolous one? OPD
- iv. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
- v. Whether the plaintiff has not come to the court with clean hands and concealed the true and material facts from the court? OPD



vi. Relief

9. In support of their version and counter version, parties led evidence as detailed in the judgment of learned Courts below.

10. On appraisal of the evidence, learned Trial Court dismissed the suit of the plaintiff, concluding that he failed to prove his case by leading any cogent and material evidence. The learned first appellate Court reviewed and appreciated the evidence, found no merit in the suit of the plaintiff and dismissed the appeal.

11. Being aggrieved by the judgment and decree of learned First Appellate Court the appellant has preferred the instant appeal.

12. I have heard the learned counsel for the appellant and have gone through the record with his valuable assistance.

13. Learned counsel for the appellant/plaintiff contends that the findings rendered by the learned Courts below are perverse, against the facts and evidence on record, as well as against the settled principles culled out in judicial decisions that trees standing on the land belong to the owner, and parties to the *lis* have been declared to be the co sharers on the suit land. Therefore, the plaintiff has equal rights over the tress standing on the joint land. The defendants, being co-shares, have no right to cut and remove the trees standing on the suit land, a joint holding. The learned counsel submits that lower Courts below ignored the well-established principle of law that co-sharer in a joint land is a co-sharer of every inch of the land. Every co-sharer has a right to use the joint property in a husband like manner, not inconsistent with similar rights of co owner. until partition. The learned



counsel submits that learned Courts below have committed an error in refusing to restrain the defendants from cutting the trees standing on the joint holding. The learned counsel further argues that learned Courts below arrived at an erroneous finding that the suit land has a *Gher* and has boundary wall around it, where as it has no independent boundary wall of its own. Learned counsel also submits that acts of tethering cattle or using the suit property for storing agriculture implements do not establish the exclusive possession of the defendants on the suit land. The learned Lower Courts erroneously highlighted the aforesaid acts of the defendants as their exclusive possession on the suit land. Learned counsel also contends that findings of the learned Courts below holding that previous litigation operates as *res-judicata* against the plaintiff, is faulty finding, as the previous suits were not pertaining to the subject matter of the present case, whereby the plaintiff is seeking to restrain the defendants, the co-sharers, from cutting and removing the trees from the joint holding. In support of his arguments learned counsel, referred to judicial pronouncement of this Court titled as **State of Haryana and Others vs. Roop Chand, 2014(30) R.C.R. (Civil) 139** and prayed to set aside the findings of the learned Courts below being contrary to the settled provisions of law concerning rights and liabilities of the co-sharers.

14. The claim of the plaintiff is that the defendants be restrained from cutting and removing trees from the suit land bearing Khasra No.318 forming part of Khewat No.18/18 Khatoni No.56 as per the jamabandi for the year 1955-56, situated in the revenue estate of village Jhojhu Khurd, which is *Banjar Kadim*, a joint holding, and is used for tethering their cattle. It is



also claimed by the plaintiff that there were 50/60 trees on the suit land, out of which 40 trees remain, and remaining trees have been cut and removed by the defendants illegally and forcibly. The plaintiff stated that defendants are mortgagee in the suit land and except a suit for partition no other suit is pending between the parties.

15. The learned Courts below, after appreciating the entire evidence, both oral and documentary, recorded definite findings that, the plaintiff concealed the material facts from the Courts regarding the defendants' status and their exclusive possession of the suit land, and the previous litigation involving the parties and other persons concerning the suit land. The learned Courts below, after considering oral deposition of the plaintiff-Mange Ram (PW-3), his witnesses Vedpal (PW-1) and Nathu Ram (PW-2), and documentary evidence as detailed in the judgment concluded that the defendants are co-sharer and in exclusive possession of the suit property. Further, observed that, apart from other litigation, a suit bearing No. 524 of 1995 was instituted by plaintiff Mange Ram and another against defendants No.1 and 2 and ancestors of defendants No.3 to 5, which involved the same subject matter as the present i.e. Khasra No.318 forming part of Khewat No.18/18 Khatoni No.56 as per the jamabandi for the year 1955-56 situated in the revenue estate of village Jhojhu Khurd. The said suit was for permanent injunction, which was dismissed vide judgment dated 17.08.1998 (Ex.D3) and defendants were found to be owner in possession of the suit land. Considering the above evidence, both the learned Courts below concluded that the plaintiff is not in possession of the suit land; rather, it is



defendants, who are in exclusive possession of the suit land and have constructed a 'Gher'.

16. Learned counsel for the plaintiff submits that, until the suit land is partitioned by metes and bounds between the parties, the defendants have no right to cut and remove the tress standing on the joint land. The learned Courts failed to recognize the rights of the plaintiff over the suit land as a co-sharer. In view of this, it is urged that the plaintiff has a right to seek decree of permanent injunction, restraining the defendants, the co-sharers, from felling and removing the trees standing on the joint land, while relying on authority titled as **State of Haryana and Others vs. Roop Chand, 2014(30) R.C.R. (Civil) 139**, wherein it is observed that '*once the trees are grown on the land of an individual, it goes with the owner of the land*'.

17. In the present case, based on the evidence, the exclusive possession of the defendants since the time of their forefathers, is made out on the suit land. The learned Counsel for appellant failed to identify any misreading or overlooking of any material piece of evidence and misapplication of evidence by the Courts below for arriving at a definite factual findings recorded above, against the plaintiff, and in favour of the defendants, rendering the findings as absurd or perverse. In view of it, the observations made in **State of Haryana and Others**, are inapplicable to the facts of the present case. Contrary, evidence does not establish that plaintiff had planted the trees in question on the suit land and nurtured them. Given these facts, the plaintiff can not be said to be clothed with the legal right to restrain the defendants from using or cutting the trees, standing on their land.



The contention of the counsel for the plaintiff that previous litigation involving the parties, has no bearing in the present case as the relief sought in the present case was not sought in previous litigation, does not hold good for the reasons that, in previous litigation (Ex.D3), the defendants have been held to be in exclusive cultivating possession of the suit land; therefore they have right to use the suit land in the manner they like, including the trees standing on the land. It is well established principle of law that where a co sharer who is in possession of the separate parcels of the property is entitled to the enjoyment of its possession, and it is not open to any one to disturb the possession. The remedy of a co-sharer not in possession of the joint property is by way of filing a suit for possession or actual possession but not for ejectment. Further, learned Courts below have rightly non-suited the plaintiffs for concealing the earlier litigation. Law is settled that who seeks equity, must do equity. A litigant who conceals material facts from the Court is not entitled for relief.

19 No other point urged.

20. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

21. As a result, there is no merit in this Regular Second Appeal and is, hereby, dismissed.

22. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.



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-.10:-

31.07.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No