

2024:PHHC:022486

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.4253 of 2017 (O&M)
Date of Decision: 14.02.2024

Murti Devi
.....Appellant.

Versus

Hukam Chand and others
.....Respondents.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Mani Ram Verma, Advocate
for the appellant.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree, as passed by learned Civil Judge (Jr. Division), Bhiwani (for short 'the trial Court') on 30.03.2015, whereby the Civil Suit filed by the plaintiff-appellant (here-in-after to be referred as 'the plaintiff') for seeking the decree for permanent prohibitory injunction to restrain the respondents-defendants (here-in-after to be referred as 'the defendants') from mortgaging, selling, leasing out the suit land and also from changing its nature or raising construction in any specific Killa number or removing/putting the earth and bricks or installing the tube-well in the same, without its partition, has been dismissed as well as by the judgment and decree dated 23.12.2016, handed down by learned Additional District Judge, Bhiwani (for short 'the Lower Appellate Court'), dismissing the appeal moved by her against the above-mentioned judgment

and decree dated 30.03.2015, she (plaintiff) has preferred the instant appeal to lay challenge to the same.

2. I have heard learned counsel for the appellant-plaintiff in the present appeal, at the preliminary stage and have perused the file carefully.

3. Learned counsel for the appellant-plaintiff has contended that the plaintiff was a co-sharer in the suit land, which was a joint holding and therefore, the defendants could neither alienate nor raise construction over any specific portion thereof nor change its nature and hence, she (plaintiff) was entitled to the relief of permanent injunction, as prayed for by her in the afore-referred Civil Suit but vide the impugned judgments and decrees, both the Courts below have wrongly rejected her above-discussed prayer and thus, it is explicit that the said judgments and decrees are not legally sustainable and these deserve to be set-aside. To buttress his contentions, he has placed reliance upon the observations, as made by the Co-ordinate Benches in *Rajinder and another versus Namarta Bahal and another, 2006(2) R.C.R (Civil) 556; Balbir Kaur versus Lamber Singh, 2004(2) R.C.R (Civil) 843* and *Rishal Singh and others versus Shri Bhagwan and another, 2007(2) PLR 325*.

4. However, the afore-raised contentions are devoid of any merit because the plaintiff claimed that by virtue of sale deed dated 02.11.2010, she had become a co-sharer in the suit land and the defendants were also co-sharers in the same. It is well-settled that a co-sharer cannot seek the relief of injunction against the other co-sharer because each co-sharer has a right in every parcel of the joint land/holding until the same is partitioned, by metes and bounds.

5. It is also worth-while to mention here that a perusal of the trial Court record reveals that throughout in her averments as canvassed in the plaint, the plaintiff has not come forward with any fair and candid version as to how, when and under what circumstances, the defendants threatened to alienate or raise construction over any specific portion of the suit land or to change its nature, so as to establish that the cause of action had arisen in her favour to seek the relief of injunction, as prayed for in the Suit.

6. Seen from yet another angle, Exhibit D2 is the copy of *Naksha 'Kha'* prepared during the course of the proceedings in the application, as shown to have been moved by co-sharers respondents-defendants No.11, 12 and 13 and Sonal, on 06.09.2012 to seek the partition of the suit land, meaning thereby that during the pendency of the above-referred Civil Suit filed by the plaintiff in the year 2010, the co-sharers in the suit land had resorted to the appropriate remedy of getting this land partitioned and the proceedings in respect thereof, were pending adjudication. In view of the afore-discussed facts and circumstances, it becomes crystal clear that the cause of action to seek the relief of injunction, does not survive any more in favour of the plaintiff. So far as the observations made in *Rajinder and another (Supra)*, *Balbir Kaur (Supra)* and *Rishal Singh and others (Supra)* are concerned, the same are of no avail to the plaintiff because in none of the above-cited cases, the partition proceedings had been initiated by the co-sharers, as has been done in the present case.

7. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to call

for any interference by this Court. Resultantly, the same are hereby upheld and the appeal in hand, being *sans* any merit, stands dismissed.

February 14, 2024

Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No