

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-1242-2021 (O&M)  
Date of Decision:-19.09.2024

Nirmal Singh Malhi and Another

... Appellants

Versus

Satnam Singh and Others

... Respondents

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**CORAM: HON'BLE MRS. JUSTICE RITU TAGORE**

Present:- Mr. Ashish Gupta, Advocate  
for the appellants.

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**RITU TAGORE, J.** (Oral)

1. Being aggrieved by the concurrent findings returned against them, appellants-plaintiffs have preferred this regular second appeal against the impugned judgment and decree dated 31.07.2019 passed by learned District Judge, Moga, affirming and upholding the judgment and decree dated 18.05.2018 passed by learned Additional Civil Judge (Senior Division), Moga in Civil Suit No.859 of 2014 titled as 'Nirmal Singh Malhi and Another vs. Satnam Singh and Others'.

2. For the sake of convenience, parties to the *lis* hereinafter, shall be referred to by their original status in the suit before Trial Court.

3. The plaintiffs instituted a suit for permanent injunction against the defendants, asserting that their father Bachint Singh had been in exclusive possession of the suit property measuring 2 kanals 19 marlas bearing Khasra No.949//2 min (2-19) for more than 30 years, while Balwant



Kaur and Pritam Kaur were in exclusive possession of land bearing Khasra No.950/2 min (9-8). The Khasra Girdwari records the possession of co-shares at the spot.

4. Accordingly to the plaintiffs, Pritam Kaur and Balwant Kaur sold their share by specific Khasra No.950/2 Min, but their names continued to appear in the column of ownership of Khasra No.949/2. Taking advantage of wrong entries standing in their names in the revenue record, Balwant Kaur and Pritam Kaur executed a sale deed out of the suit property, despite having no right and title to sell the same, as they were no longer the owners of the suit property. The plaintiffs further asserted that Hakam Singh and Ors. the vendees of Balwant Kaur and Pritam Kaur, filed a false suit against their father in order to grab the suit property. However, the Court directed the parties to maintain *status quo*.

5. The plaintiffs further maintained that after the death of their father, they inherited the suit property and the mutation of inheritance bearing No.30473 was sanctioned in their favour. The plaintiffs claimed that their father had already constructed a boundary wall and a room on the suit property. Upon their visit to the suit property, the plaintiffs found the defendants were present there. They asserted their ownership and possession on the suit property, claiming to have purchased the same from Hakam Singh. The complaint made to the police by the plaintiffs against the defendants yielded no result. Consequently, the plaintiffs filed the instant suit, seeking to restrain the defendants from raising any construction on the suit property, a plot, measuring 2 kanals 19 marlas, bearing Khasra No.949/2 min, khewat No. 1323, Khatoni No. 1617 and as reflected in the site plan



marked as ABCDEFG, and shown in red color in the site plan, situated at Guru Ram Dass Nagar, Moga, Tehsil and District Moga illegally, forcibly without due course of law.

6. Upon being notified, defendants No.1 to 3 appeared and contested the suit by filing a written statement, pleading that father of the plaintiffs was not in exclusive possession of the suit property bearing Khasra No.949/2 min, as the entire revenue record depicts Balwant Kaur and Pritam Kaur to be exclusive owner in possession of the suit property. Hakam Singh purchased 01 Kanal 3 Marlas from Pritam Kaur and the defendants purchased from Hakam Singh. Remaining property out of total land 2 kanal 19 marlas was purchased by Kuldeep Singh, Gurmeet Singh, Surjeet Singh and Gurkirat Singh. The mutation was also sanctioned in their names.

7. Defendant No.4 also upon notice of the Court, appeared and filed written statement pleading that he purchased the part of suit property from Amandeep Singh and Rajinder Singh, the vendees of Hakam Singh, for valuable consideration, vide sale deed dated 07.11.2012. The defendant is *bona fide* purchaser and is in possession of the land. By controverting the averments, prayed for dismissal of the suit.

8. The stand taken in written statement was controverted in the replication, filed by the plaintiffs.

9. Since the parties were at variance, the learned trial Court framed the following issues:-

1. Whether the plaintiffs are entitled for the relief of permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD



3. Whether the plaintiffs have no locus standi to file the present suit?  
OPD
  4. Whether the plaintiffs have no cause of action to file the present suit against the defendants? OPD
  5. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of the necessary parties? OPD
  6. Whether the plaintiffs have concealed the material facts from this Court? OPD
  7. Relief.
10. To substantiate their case, the plaintiff appeared as PW-1 and in his testimonial affidavit PW-1/A reiterated the version of the plaint. Davinder Singh Gill, Draftsman, (PW-2), supported the version of plaintiff and deposed that he prepared the site plan Ex.P-4 of the suit property. Apart from the oral evidence, plaintiffs placed on record Jamabandi for the year 2008-09 Ex.P-1, copy of Khasra Girdawari Ex.P-2.
11. The defendants did not present any oral evidence, except tendering the photographs Ex.D-1 to Ex.D-4 of the disputed plot.
12. The learned trial Court, upon appraisal of the evidence, concluded that suit property is a joint holding and has not been partitioned. The alternative efficacious remedy available to the plaintiffs is to file a suit for partition, when a co-sharer is not in actual exclusive possession of the joint land. 1<sup>st</sup> Appeal filed by the plaintiffs was also dismissed by the learned Appellate Court, affirming the findings of the learned trial Court below.
13. Learned counsel submits that the learned Courts below erred in dismissing the suit of the plaintiffs. The inference and conclusions drawn by the learned Courts below are wholly erroneous, illegal and unsustainable in the eyes of law. The learned Courts below failed to appreciate that the



evidence presented by the plaintiffs remained unrebutted by the defendants, who did not come in the witness box to substantiate their version or rebut the plaintiffs' case. In these circumstances, the unrebutted version of the plaintiffs should have been relied upon, and their possessory right ought to have been protected by granting a decree of injunction. It is contended by the learned counsel for the plaintiffs that the learned Courts below erred in concluding that plaintiffs' suit for permanent injunction was not maintainable and that they were required to file a suit for partition. It is stated that plaintiffs' suit for permanent injunction was maintainable against the defendants, and the findings of the learned Courts below are vulnerable in the eyes of law. A prayer is made to allow the appeal and set aside the impugned judgments.

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

15. The plaintiffs set up the suit claiming that their father Bachint Singh, and after his death, they are in exclusive possession of the suit property, a plot, as detailed in the head note of the plaint. Their father had constructed a boundary wall and a room on the suit property. However plaintiff No.1-Nirmal Singh (PW-1), during his cross-examination admitted that the suit property is a joint holding and has not been partitioned as yet. He also acknowledged that defendants are recorded as co-sharers in the record of rights and mutation No. 32325 dated 20.01.2012 has been sanctioned in their favour. Learned 1<sup>st</sup> Appellate Court also noted that plaintiffs failed to clarify the suit plot from the photographs Ex.D-1 to Ex.D-4 and he could not identify the suit plot, or provide its Khasra number,



regarding which the suit was filed. Additionally, he also presented a contradictory stance regarding the area of suit property. In plaint, he sought permanent injunction over the plot bearing Khasra No.949/2 min but on oath, he deposed to 56 marlas of land of Khasra No.949/2 and khasra No.950/2. In light of the evidence, the learned Courts below have rightly concluded that plaintiffs are not in exclusive possession of suit property.

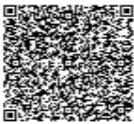
16. Law is settled that when land is joint amongst the co-sharers, and the co-sharer, who is not in exclusive possession of joint land, cannot seek injunction against other co-sharer. The appropriate and effective remedy available to him is to seek partition of the joint holdings.

17. Learned counsel for the plaintiffs/appellants failed to point out any misreading or misinterpretation of the evidence by the learned Courts below, while arriving at the conclusions and the inferences drawn against plaintiffs, based on the appraisal of the evidence. The learned Counsel also failed to contest the specific observations made by the learned Courts regarding the categorical admissions made of plaintiff (PW-1), which were critical in reaching such conclusions, as discussed above.

18. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

19. No other point was raised or pressed.

20. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on appreciation 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 the appeal and is, hereby, dismissed.
22.           Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

19.09.2024  
Gaurav Sorot

( RITU TAGORE)  
JUDGE

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