

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.3605 of 2023(O&M)
Date of Decision: 18.01.2024

Jagjeet Singh
...Appellant
Versus
Sukhdarshan Singh & another
...Respondents

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

Argued by:- Mr. Rajinder Kumar Singla, Advocate,
for the appellant.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree handed down by learned Additional Civil Judge (Senior Division), Tohana, District Fatehabad (for short ‘the trial Court’) on 09.05.2017, whereby the Civil Suit filed by the appellant-plaintiff (here-in-after to be referred as ‘the plaintiff’) against the respondents-defendants (here-in-after to be referred as ‘the defendants’) for seeking the decree for permanent injunction to restrain them (defendants) from interfering in his peaceful possession over the suit property, has been dismissed as well as by the judgment and decree passed by learned Additional District Judge, Fatehabad (for short ‘the Lower Appellate Court’) on 08.09.2023, qua the dismissal of the appeal moved by him (plaintiff) to assail the afore-said judgment and decree dated 09.05.2017, the plaintiff has preferred the instant Regular Second Appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, emerging from the perusal of the file and culminating in the filing of the present appeal, are that the plaintiff filed the above-referred Civil Suit against the defendants, while averring that due to the constant dispute between him and defendant No.1, his real brother, in respect of their joint ancestral land, a compromise had been got effected between them by the Gram Panchayat, in the year 1995 and in pursuance thereof, he (plaintiff) had instituted *Civil Suit No.1111 of 1996* against defendant No.1, which had been decreed by the competent Court vide the judgment and decree dated 08.02.1997 and since then, he had been continuing in the possession over the suit property as its owner and had also constructed a house therein but the defendants had been trying to interfere in his peaceful possession over this property. However, the afore-said Civil Suit has been dismissed by the trial Court and the appeal filed by the plaintiff against the judgment and decree passed by the trial Court, has also ended in its dismissal as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-plaintiff in the instant appeal, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the plaintiff has contended that by virtue of the above-mentioned judgment and decree passed by the concerned Civil Court on 08.02.1997, the plaintiff has become the owner in possession of the suit property, as reflected in the subsequent '*Jamabandis*' and he has constructed his house thereon and even the '*fard-badar*' (the document for

rectification/correction in the revenue record) regarding the revenue record pertaining to the suit property, as sanctioned in favour of defendant No.1, has also been set aside vide the judgment and decree passed in another Civil Suit, filed by the plaintiff to assail the same but the defendants have been threatening to interfere in his (plaintiff's) possession over the said property and therefore, the plaintiff is entitled to the relief of injunction to protect his possession over the same but vide the impugned judgments and decrees, both the Courts below have erroneously declined his (plaintiff's) prayer for grant of the afore-said relief and hence, the said judgments and decrees deserve to be set-aside.

5. However, the above-raised contentions are devoid of any force because the plaintiff claims himself to be the owner in possession over the suit property, on the strength of the afore-mentioned judgment and decree dated 08.02.1997 but it has categorically been observed by the trial Court in Para No.15 of its judgment that prior to the passing of the said judgment and decree, defendant No.1 was recorded to be the exclusive owner of the entire land as comprised in Khasra No.22//18/1/2 measuring 03 Kanals 02 Marlas and mutation No.480 also stood recorded in his favour to this effect and in pursuance of the above-said judgment and decree dated 08.02.1997, the plaintiff had become owner of the land comprised in afore-said Khasra No.22//18/1/2 (03K-02M) and Khasra No.22//18/1 (03K-18M) to the extent of 119/140 share thereof, measuring 05 Kanals 19 Marlas and the balance 21/140 share remained under the ownership and possession of defendant No.1 and mutation No.520 had been entered and sanctioned accordingly

but in the *Jamabandi* for the year 1996-97, the plaintiff had inadvertently, been recorded to be the owner in possession of the entire land comprised in both the above-referred Khasra numbers. Moreover, the Lower Appellate Court has also specifically observed in Para No.20 of its judgment that mutation No.520 pertains to the land measuring 02 Kanals 13 Marlas, i.e 53 Marlas, which is equal to the 119/140 share of the land comprised in Khasra No.22//18/1/2(03K-02M), i.e 62 Marlas. This Court does not find any fault with the afore-discussed observations recorded by both the Courts below because the plaintiff can neither claim nor be granted any right in the suit property beyond the one as transferred/given to him vide the above-said judgment and decree dated 08.02.1997.

6. Though the afore-mentioned '*fard-badar*', has been set aside but the fact remains that the trial Court has categorically mentioned in Para No.15 of its judgment that the same was set aside as the Revenue Officials had not followed the requisite procedure for sanctioning it and further, the Lower Appellate Court has also made categoric observations in Para No.20 of its judgment that the Revenue Authorities were not competent to do so. In these circumstances, mere factum of '*fard badar*' having been set aside, cannot be construed to have conferred ownership qua the entire property, upon the plaintiff. Rather, defendant No.1, being the owner to the extent of 21/140 share in the said property, is a co-sharer in the same along-with the plaintiff and it being so, the factum of the construction of the house by the plaintiff therein, without getting it partitioned by metes and bounds, does not entitle him to seek the injunction against defendant No.1, his co-sharer

because it is well-settled that the possession of a co-sharer over any portion of the joint property is deemed to be the possession on behalf of all the other co-sharers also.

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 upheld and the Regular Second Appeal in hand, being *sans* any merit, stands dismissed.

18th January, 2024.
Seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*