

109.

2024:PHHC:018896

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

RSA-221-2019 (O&M)

Date of decision: 05.02.2024

Yadram (since deceased) through his LRs

... Appellant

Versus

Murari Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Navmohit Singh, Advocate, for the appellant.

GURBIR SINGH, J.

CM-498-C-2019

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 2 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 2 days in filing the present appeal is condoned.

CM-497-C-2019

Prayer in this application filed under Section 151 of CPC is for condonation of delay of 261 days in re-filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 261 days in re-filing the present appeal is condoned.

CM-500-C-2019

Prayer in this application filed under Section 151 of CPC is to place on record copies of orders of courts below i.e. dated 05.01.2015

and 14.09.2017, typed copy of grounds of appeal filed before the learned Appellate Court and for exemption from filing certified copies thereof.

For the reasons stated in the application, same is allowed and the abovementioned documents are taken on record subject to all just exceptions.

RSA-221-2019

1. Present Regular Second Appeal has been filed by the legal representatives of plaintiff-Yadram (since deceased) against the judgment and decree dated 14.09.2017 passed by learned Additional District Judge, Narnaul, whereby the appeal filed by him against the judgment and decree dated 05.01.2015 passed by learned Civil Judge (Junior Division), Mohindergarh, has been dismissed.

2. Brief facts of the case are that Yadram (since deceased), (hereinafter called, "plaintiff") filed a suit for injunction that the respondents-defendants (hereinafter called, "defendants") be restrained from raising construction or from diminishing the utility of the disputed portion i.e. mustil and killa No.29//18/1. The case of the plaintiff is that he is owner in possession to the extent of 1/4th share in joint land falling in khewat No.104, Khatoni No.136, kita 8 i.e. 35 kanal 3 marla situated in Village Rivasa, Tehsil and District Mahendergarh. It has been submitted that no partition has been effected till date and disputed portion i.e. mustil and killa No.29//18/1 comprising 2 kanal 4 marla situated at Kahina-Mahendergarh road, is a valuable portion and plaintiff

has 1/4th Share in the joint property. However, the defendants want to raise construction over the same without getting the same partitioned. Hence, the suit for injunction was filed.

2.1 Upon notice, defendants No.1, 3 to 7 appeared whereas defendant No.2 was proceeded against ex-parte. The said defendants filed written statement and submitted that the suit land is not joint and vide one writing/family settlement dated 02.03.1981, it was mutually partitioned between the family members and they became owner in possession over specific portions. As per said family settlement, khasra No.202 out of area measuring 2 kanals 0 marla gair mumkin, 1 kanal 0 marla situated in western side was given to Yad Ram, plaintiff, whereas 1 kanal 0 marla on the eastern side was given to one Mangal Chand @ Mam Chand i.e. father of defendants No.3 and 4. Since defendant No.3-Ram Kishore wanted to get loan for installation of a factory, 1 kanal land on eastern side of khasra No.202 was transferred in his name vide sale deed No.1494 dated 02.03.1981. The disputed portion i.e. mustil and killa No.29//81/1 comprising 2 kanals 1 marla was given to Daya Chand i.e. the father of defendants No.5 to 7, and Smt. Laxmi widow of Jeet Ram, who is mother of defendant No.1, in equal share i.e. ½ each. It is further submitted that after the partition, all the four brothers i.e. Yad Ram (plaintiff), Jeet Ram (father of defendants No.1 and 2), Mam Chand @ Mangal Chand (father of defendants No.3 and 4) and Dayal Chand (father of defendants No.5 to 7), who are the descendant of their common

ancestor Sohan Lal, became owner in possession over specific portions and thus, have raised construction. It was also contended that in the plaint, the plaintiff intentionally has not mentioned about khasra No.202 as he himself has raised construction over the same.

2.2 The defendants further argued that the suit land was partitioned inter se by all the descendants vide writing Ex.DW1/B. The plaintiff himself purchased the stamp for said writing. The partition was effected earlier but it was recorded in Ex.DW1/B lateron. This fact was corroborated in the statements of DW1-Ram Swaroop and DW2-Mahabir. The Local Commissioner report Ex.P9 reflects that the parties are in possession of specific portions, which means that the suit land had already been partitioned, and thus, the plaintiff cannot claim injunction.

2.3 After appreciating the evidence on record, the trial Court vide judgment and decree dated 05.01.2015 dismissed the suit of the plaintiff. The plaintiff filed appeal against the findings recorded by the trial Court but same were also upheld by the learned appellate Court vide judgment and decree dated 14.09.2017 and appeal was dismissed.

2.4 Aggrieved against the judgments and decrees of both the courts below, the plaintiff has approached this Court by way of present appeal.

3. Learned counsel for the appellant has argued that in the suit land that falls in killa No.29//18/1 comprising in 2 kanals 4 marlas, the appellant-plaintiff has 1/4th share and it is situated roadside and is

valuable land and if the respondent-defendants are allowed construction, it would diminish its utility. Partition proceedings are pending and till suit land is partitioned, the respondents-defendants be restrained from raising any construction thereon and thus, prayed for injunction. It is submitted that the suit land is agricultural in nature. The partition deed is unregistered document. The report of Local Commissioner has no value in the eyes of law and same should not be made the basis for proving possession.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. Both the courts below have concurrently found that the suit land is joint. Once the suit land is not partitioned and the parties to the suit are co-sharers and co-owners, each and every co-sharer is in possession of every inch of land. A co-owner cannot prevent another co-owner by injunction the usage of the portion of joint property unless the same amounts to wastage or destruction or injury to the other co-owners. Every co-owner has a right to use the joint property in a husband like manner. In the instant case, both the courts have held that the plaintiff is not in possession of any part of suit land and even in the report Ex.P9 of Local Commissioner, the plaintiff was not found in possession over the disputed portion. Moreover, defendants-respondents proved a writing Ex.DW1/B that the suit land was already partitioned by

the brothers and stamp paper for the same was even purchased by the plaintiff himself.

6. Since the plaintiff is not proved to be in exclusive possession of any part of suit property, so he cannot seek injunction against the co-owner. Under such circumstances, the coordinate Bench of this Court in ***RSA No.5381 of 2019-Tarsem Singh (deceased) through his LR Versus Major Singh (deceased) through his LRs and others, decided on 25.07.2022*** has the opportunity to deal with the same proposition. The extract of said judgment is as under:-

*“..... Learned counsel placed reliance on the Full Bench decision in the matter of **Bhartu vs. Ram Sarup [1981 PLJ 204]**. In Bhartu’s case (supra) the Full Bench noted the earlier decision by a Division Bench in the case of **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram [AIR 1961 Pb. 528]** wherein the following propositions were settled :*

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) 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.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession

of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.

In Bachan Singh vs. Swaran Singh [2000(3) RCR (Civil) 70] the Division Bench inter-alia held that :

“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.

This Court is unable to apply the ratio in Bhartu's case to the facts of the present case when the plaintiff-appellant has failed to establish his exclusive possession over the suit land and there being no finding that any act by the defendant-respondents was detrimental to the interests of the other co-owners in the joint land."

7. This Court finds that the plaintiff-appellant is not in possession of any portion of suit property. The case of respondents-defendants is that joint property has already been partitioned and the document prepared qua the same is proved as Ex.DW1/B and parties are in exclusive possession of parcel of land which came to their share as per family partition. Under such circumstances, plaintiff cannot file suit simplicitor for injunction and there being no finding that any act of defendants was detrimental to the interest of other co-owners.

8. The courts below have recorded concurrent findings of facts. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

February 05, 2024

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No