

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****RSA No.2688 of 2022 (O&M)****Reserved on : 13.01.2025****Date of Decision : 21.01.2025**

Rohtash

....Appellant

VERSUS

Smt. Sheela Devi

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kanwar Abhay Singh, Advocate for the appellant.

ALKA SARIN, J.**CM-9333C-2022**

1. For the reasons stated in the application, the same is allowed. The delay of 163 days in re-filing the present appeal is condoned.

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2. Present appeal has been preferred by the plaintiff-appellant challenging judgment and decree dated 29.10.2021 passed by the First Appellate Court whereby the judgment and decree dated 19.09.2017 passed by the Trial Court has been reversed and his suit has been dismissed.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction averring in the plaint that he is co-owner and in exclusive possession of 16 Kanals of land, fully described in the plaint, situated in the revenue estate of village Mehchana, Tehsil Farrukhnagar, District Gurugram. It was further averred that the plaintiff-appellant had sown crop of mustard (sarson) on the suit property. However, the defendant-respondent alleged that she had purchased some portion of the

suit property and was harassing the plaintiff-appellant with *malafide* intention to dispossess him. Hence, the present suit. The defendant-respondent appeared and filed her written statement wherein various preliminary objections were raised. It was averred in the written statement that the plaintiff-appellant had sold more share than his actual share in the suit property and that he was residing with his family near the road in his excess share forcibly. It was further averred in the written statement that the plaintiff-appellant is not a co-sharer in the suit property. All other averments made in the plaint were denied.

4. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is owner in exclusive possession of the suit property ? OPP
2. Whether plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the plaintiff has no cause of action or locus-standi to file the present suit ? OPD
5. Whether the plaintiff has concealed true and material facts from the court ? OPD
6. Whether the plaintiff is estopped by his own act, conduct and omission to file the present suit ? OPD
7. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 19.09.2017. Aggrieved by the same an appeal was preferred by the defendant-respondent which appeal was allowed by the First Appellate Court vide

judgment and decree dated 29.10.2021 and the suit of the plaintiff-appellant was dismissed. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that the First Appellate Court erred in accepting the appeal of the defendant-respondent and in dismissing the suit. It is urged that the plaintiff-appellant is in possession of the suit property and that the defendant-respondent was interfering in his possession. It is further the contention that the plaintiff-appellant has constructed his house on the suit property and the injunction ought to have been granted in his favour.

7. Heard.

8. In the present case the defendant-respondent purchased 23 Kanals 10 Marlas of land vide a registered sale deed dated 24.06.2013 (Ex.D1) out of land measuring 48 Kanals, which includes the suit property. Subsequent thereto the present suit was filed on 22.11.2013. The plaintiff-appellant while stepping into the witness-box was unable to disclose as to how much land was owned by him. It is apt to notice that the plaintiff-appellant was shown as owner of land measuring 01 Marla out of total land measuring 960 Marlas in the Jamabandi (Ex.P1). However, in the khasra girdawari he is shown to be in possession of land measuring 16 Kanals. The plaintiff-appellant further in his cross-examination stated that except for the wheat crop no other crop was sown on the suit property whereas the categorical case of the plaintiff-appellant was that he had sown the mustard crop (sarson) on the suit property. Even a perusal of Ex.DX, which is a contempt petition, the plaintiff-appellant had himself time and again asserted that the defendant-respondent was in possession of her share since the day of its purchase.

9. Learned counsel for the appellant has not been able to convince this Court that he is in exclusive possession of the suit property. Further still, as per averments of the plaintiff-appellant himself he is a co-sharer in the suit property. A Division Bench of this Court in case of **Bachan Singh vs. Swaran Singh [2000 (3) RCR Civil 70]** held as under :

“ 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.”

10. It was further held by the Hon’ble Supreme Court in the case of **T. Ramalingeswara Rao (Dead) through LRs & Anr. vs. N. Madhava Rao & Ors. [2019 (2) RCR (Civil) 770]** as under :

“ 17. In our view, even assuming that the plaintiffs claimed to be in possession of the suit property (which the two Courts below did not find in their favour) for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property. It is a settled principle of law that the possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period.”

11. In view of the law laid down by Hon’ble Supreme Court in case **T. Ramalingeswara Rao** (supra) and by the Division Bench of this Court in case of **Bachan Singh** (supra), no suit for injunction would be maintainable against co-sharers and the only remedy would be to seek partition.

12. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(**ALKA SARIN**)
JUDGE

21.01.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO