

2025:PHHC:017259



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

137

RSA-1372-2024 (O&M)

Date of Decision : 05.02.2025

DARSHAN SINGH (DECEASED) THR LRS

.... Appellants

VERSUS

SATWINDER KAUR AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dinesh Nagar, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 29.10.2019 passed by the Trial Court and the judgment and decree dated 25.04.2024 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for injunction for restraining defendant-respondent No.1 from interfering in the peaceful possession over the land measuring 10 Kanals 10 Marlas comprised in Khasra No.1702/733(1-14), 1704/733(0-11), 1699/732(1-2), 1700/733(7-0), 1701/733(0-8) and 1703/733(0-5) situated in Village Panwan, HB No.109, Tehsil Dasuya, District Hoshiarpur as per the jamabandi for the year 2011-12. It was averred in the plaint that defendant-respondent No.1, namely, Satwinder Kaur had purchased the suit land from Manjit Kaur wife of Amrik Singh who had purchased the same from one Satnam Singh son of Sohan Singh. It was

further averred that neither Satnam Singh nor Manjit Kaur were the original owners of the suit land and that both of them had become co-sharers after purchasing the suit land from some of the co-owners. It was further averred that both Satnam Singh and Manjit Kaur were in possession of the suit land and that defendant-respondent No.1 had purchased only a nominal share out of the suit land. It was further the case that the plaintiff-appellants were in possession of the suit land since the time of their forefathers.

3. Written statement was filed by defendant-respondent No.1 raising preliminary objections that the plaintiff-appellants were not in possession of the suit land and as such not entitled to a decree of permanent injunction. It was further averred that the plaintiff-appellants had not approached the Court with clean hands. Sohan Singh father of Satnam Singh was the real brother of the plaintiff – Darshan Singh – and that they were the original owners of the suit land. On merits it was stated that the plaintiff-appellants were not in possession of the suit land. Rather defendant-respondent No.1 was in possession of the suit land measuring 0 Kanals 15 Marlas out of joint Khata and that defendant-respondent No.1 had purchased the suit land out of the share of Satnam Singh son of Sohan Singh who sold 1 Kanal 5 Marlas to Manjit Kaur vide sale deed dated 27.02.2015 and Manjit Kaur sold the said land to defendant-respondent No.1 vide registered sale deed dated 24.03.2017. Manjit Kaur put defendant-respondent No.1 in possession of the suit land.

4. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the plaintiff is not in possession of the suit property ? OPD
3. Whether the plaintiff has not come to the Court with clean hands ? OPD
4. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 29.10.2019. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 25.04.2024. Hence, the present regular second appeal by the plaintiff-appellants.

6. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit. It is urged that the plaintiff-appellants were in exclusive possession of the suit land and hence injunction ought to have been granted to them.

7. Heard.

8. In the present case, admittedly, the plaintiff-appellants and defendant-respondent No.1 are co-sharers in the suit land along with 10-12 other people. Both the Courts have concurrently found that there was not an

iota of evidence on the record to prove the exclusive possession of the plaintiff-appellants over the suit land. In the absence of any evidence to show that the plaintiff-appellants were in exclusive possession of the suit land to the exclusion of the other co-sharers, no fault can be found with the judgments and decrees passed by both the Courts concerned.

9. A Division Bench of this Court in the case of **Bachan Singh Vs. Swaran Singh [2000 (3) RCR (Civil) 70]** has 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.”

In the absence of any evidence having been led by the plaintiff-appellants to show that they were in exclusive possession of the suit property, no injunction could have been granted in their favour. Further still, even if the plaintiff-appellants are in possession of some portion of the property which is held by them along with other co-owners, the remedy would be to file a suit for partition.

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

05.02.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No