

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225****RSA-4055-2013 (O&M)****Date of decision: 25.08.2025****Rajinder Singh****...Appellant(s)****Vs.****Amarjit Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Navjeet Singh, Advocate for
the appellant through V.C.

None for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the judgment and decree dated 24.08.2013 passed by learned Additional District Judge, Ludhiana; whereby Civil Appeal filed by respondent/plaintiff against dismissal of his suit for permanent injunction by the learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 23.02.2012, has been allowed.

2. Learned counsel for the appellant/defendant submits that the learned Additional District Judge, Ludhiana was in error in passing the impugned judgment and decree by ignoring the fact that respondent No.1 had concealed the factum of compromise from the learned appellate Court. It is submitted that the Learned Lower Court has specifically held that the above said suit is not maintainable against the co-sharer who is in joint possession with the plaintiff-respondents and so the appellant



cannot be restrained from alienating the suit property. The suit is also not maintainable qua the relief of dispossessing the plaintiffs and it is admitted fact that plaintiffs and appellants are in joint possession of the suit property and respondent cannot be dispossessed from the suit property when appellant has already admitted the factum of same and he never threatened them from dispossessing them illegally. Even otherwise, he has filed partition proceedings before the Court of Tehsil Ludhiana (West). The Learned Lower appellate court had failed consider the abovesaid fact and illegally and wrongly reversed the findings of the Learned Trial Court.

3. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 24.08.2013 be set aside.

4. No other argument is raised on behalf of the appellant.

5. I have heard Id. counsel and perused the case file in detail.

6. Brief facts of the case are that the plaintiffs and defendants are admittedly joint owners in possession/co-sharers of the suit land as per Jamabandi for the year 2005-06. The land in dispute has never been partitioned. It was the case of the plaintiffs that the defendant/appellant had threatened the plaintiffs to dispossess them from the suit land and had threatened to raise construction over the same. As such, plaintiffs had filed present suit on 24.05.2011 for permanent injunction *“restraining the defendant himself, through his attorneys, assignees, servants, or any body else on his behalf from raising any construction in order to change the nature of the land comprised in Khewat no.427 Khatauni no.496, Khasra*



no.10318, Khatauni no.497 Khasra no.10318, as per jamabandi for the years 2005-06 situated at village Kila Raipur, Tehsil and District Ludhiana and from dispossessing or causing to dispossess the plaintiffs forcibly, illegally or in any manner whatsoever from the above said land and further restraining the defendant from alienating any specific portion out of the said property without getting the same partitioned, on the basis of oral and documentary evidence.”

7. Vide judgment and decree dated 23.02.2012, the learned Civil Judge (Junior Division), Ludhiana had dismissed the suit of the plaintiffs by accepting the contention of the defendants that the matter had been compromised between the plaintiffs and the defendants vide writing dated 17.03.2009 as per which, Memorandum of Partition Ex.D1 was duly executed between the parties. The learned trial Court held that the said Memorandum Ex.D1 was drafted at the instance of the plaintiff No.2 Parminder Singh on behalf of the other plaintiffs, and he had signed the same in sound mind. Moreover, plaintiffs had themselves raised construction of suit land without prior permission of the defendants. It was further held that the plaintiffs, in order to claim relief of permanent injunction had to prove that they are in exclusive possession of suit property over special area, but they have failed to do so as both the parties had admitted that they are in joint possession of suit property. Even as per Jamabandi, both the parties are owners in possession of suit property jointly. Although partition proceedings are pending however partition is yet to be affected. This fact has been admitted that the



defendants had filed partition proceedings before the Tehsildar Ludhiana (West). Accordingly, learned trial Court had dismissed the suit of the plaintiffs holding that suit was not maintainable under Section 41(h) of Specific Relief Act as plaintiffs had efficacious remedy of filing the suit for partition.

8. The Civil Appeal was filed only by the plaintiff No.1. Vide the impugned judgment and decree, the Id. Additional District Judge, Ludhiana had decreed the suit of the plaintiff No.1 in the following manner: -

“18. Therefore, in view of the discussion made above, the appeal is allowed. The impugned judgment and decree is set-aside and the defendant is restrained from raising any construction in order to change the nature of the suit land of detailed in the head note the plaint situated at village Kila Raipur, Tehsil and District Ludhiana and from dispossessing dispossess the or causing plaintiff illegally to or forcibly and from alienating any specific portion out of the said property which is not in his exclusive possession and which is not within his share without getting the suit land partitioned. Decree sheet be drawn. Lower court record be returned.”

9. I find no error in the same as, it has been proved on record that the plaintiff/respondent No.1 was not a signatory to the writing dated 17.03.2009 Ex.D1. The said writing was executed only between plaintiffs No. 2 and 3 on the one hand and the defendants on the other hand. However, the same has been signed only by plaintiff No.2 Parminder Singh. Ex. D-1 is not signed by even by plaintiff No. 3 Parmajit Kaur, let



alone plaintiff No.1 Amarjit Singh. Moreover, as per the said writing, some land had been partitioned between the parties to the writing but khasra Nos. of the said partition are not mentioned in Ex.D1. Even further, the writing Ex.D1 does not find mention in the revenue record. Even further, defendant had admitted in his cross-examination that plaintiff No.1 was not a party to the compromise, and he has not signed the writing, Ex.D1. Defendant had further admitted that Khasra No. 10318 is not mentioned in Ex.D1. This fact has also been admitted by Jagminder Singh DW2, who is also one of the signatories of the writing Ex.D1. DW2 has admitted that no compromise was settled regarding Khasra No. 10318 vide writing Ex.D1; and that plaintiff no.1 Amarjit Singh was not a party to Ex.D1. In this circumstance, learned lower appellate Court had correctly held that plaintiff No.1 could not be bound by this writing as he was not party to the same.

10. It was further admitted that partition proceedings for partitioning the joint land, are pending. Defendant has admitted that plaintiff is in cultivating possession of his share. In this circumstance, in view of the pendency of partition proceedings, there is no other efficacious remedy available to the plaintiff save by way of filing present suit for permanent injunction against the defendants to restrain them as above. Even before this Court, appellant has failed to bring any evidence on record to show that partition proceedings stand concluded.



11. Before parting, it may also be pointed out that on 06.05.2019, following order was passed by a Coordinate Bench of this Court: -

“Admittedly, the contesting parties are co-sharers in the disputed land and partition proceedings at the instance of appellant-defendant are pending before the Revenue Authorities, although it is claimed that the appellant is in exclusive possession of certain area of the land in question which is not in excess of his share therein, and has already constructed a house on the said area.

Let the appellant place on record the authenticated site plan of the disputed land indicating the location and extent of his construction upon the same, before any further orders are passed.

Adjourned to 29.07.2019.”

12. As per office report dated 21.08.2025, said order has not been complied with by the appellant till date despite grant of numerous opportunities in this regard.

13. In view of the same, no ground is made out to interfere in the impugned judgment and decree dated 24.08.2013 passed by learned Additional District Judge, Ludhiana. The present Regular Second Appeal is hereby **dismissed**.

14. Pending applications, if any, stand disposed of.

25.08.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No