

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-2396-2019 (O&M)****Date of decision: 04.02.2025****Kuldeep Kaur & Another****...Appellant(s)****Vs.****Sarabjit Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ravish Bansal, Advocate  
Ms. Liza Bansal, Advocate  
for the appellants.

\*\*\*

**NIDHI GUPTA, J.**

Present second appeal has been filed by the defendants No.2 and 3 against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiffs/respondents No.1 and 2 herein, for permanent injunction restraining the defendants from interfering into the possession of the plaintiffs over the suit property, has been decreed by both the Courts below.

2. The appellants/defendants No.2 and 3 shall hereinafter be referred to as the 'appellants'; and the respondents No.1 and 2/plaintiffs as the 'plaintiffs'.

3. Brief facts of the present case as pleaded by the plaintiffs are that plaintiffs and their nephew Sandeep Singh being co-sharers, filed a Suit for Permanent Injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs over the land



measuring 56 kanals 11 marlas, bearing khewat no. 48, khatauni no. 159, khasra no. 124/2min/8-17, 125/2/9-7, 126/2/9-7, 127/16-0, 128min/13-0, situated in the revenue estate of village Nangal, Tehsil and Distt. Faridkot, as per jamabandi for the year 2010-11; and for restraining the defendants from dispossessing the plaintiffs from the land mentioned above illegally, forcibly, without due course of law. It was pleaded by the plaintiffs that Sandeep Singh has gone abroad and plaintiffs are cultivating the share of Sandeep Singh and have filed present suit on behalf of Sandeep Singh also. It was averred that to deceive and defraud the plaintiffs and Sandeep Singh, defendants inter-se had procured a sale deed showing the delivery of possession of khasra no. 126/2/9-7, which was not in their possession. Now, defendants want to encroach upon the suit land without any right and also want to interfere into the peaceful possession of the plaintiffs and Sandeep Singh over the suit land, for which they have no right. Plaintiffs and Sandeep Singh are in exclusive possession of the suit land in their own right and being co-sharers. It has been further averred that defendants are threatening the plaintiffs that they will dispossess them forcibly from the suit land and will interfere into their possession over suit land without any right. Earlier, in an attempt to interfere into the possession of the plaintiffs over the suit land, defendant no.2 Kuldeep Kaur had filed an application for correction of khasra girdawari alleging her possession over the above referred 9 kanals 7 marlas of land, but same was dismissed by Assistant Collector 2nd Grade, Kotkapura after visiting the spot and after verifying the



possession of the plaintiffs. Plaintiffs requested the defendants to admit their claim, but to no effect. Hence, the suit.

4. Upon notice, the appellants had put in appearance before the learned trial Court filing written statement resisting the suit on numerous grounds inter alia contending that the suit is barred by the principle of res judicata; suit against co-sharer does not lie as no injunction can be granted against the co-sharers; the plaintiffs are estopped by their own act and conduct from filing the present suit; and the suit is bad for non-joinder of necessary parties as all co-sharers have not been impleaded as party. Various pleas were taken on the merits of the matter as well.

5. Defendant No.1 was proceeded against ex parte by the learned trial Court as he failed to appear in the Court despite service. Plaintiffs filed replication reiterating the version in the plaint and controverting the averments made in the written statement.

6. On the basis of pleadings of the parties, following issues were framed vide order dated 08.09.2015:-

*“1. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*

*2. Whether the suit is barred by principle of res-judicata? OPD*

*3. Whether plaintiffs are barred by their own act and conduct from filing the present suit?OPD*

*4. Whether suit is not maintainable? OPD*

*5. Whether suit is bad for non-joinder of necessary parties?*

*OPD*

*6. Relief.”*



7. On the basis of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court decided issue No.1 in favour of the plaintiffs and against the defendants; issues No.2 & 4 against the defendants and in favour of the plaintiffs; and issues No.3 & 5 against the defendants being not pressed. Consequentially, the suit of the plaintiffs was decreed by the learned trial Court with costs vide judgment and decree dated 19.02.2018. Against the same, the appeal bearing Civil Appeal No.175 of 03.04.2018 was filed by the appellants/defendants No.2 and 3, which was dismissed by the learned Additional District Judge, Faridkot vide judgment and decree dated 08.08.2018. Hence, the present second appeal.

8. Learned counsel for the appellants assails the impugned judgments and decrees of the learned Courts below by submitting that out of the total joint land holding of 256 kanal 16 marla, the plaintiffs have filed the civil suit only qua suit land measuring 56 kanal 11 marla. Admittedly, the plaintiffs and the defendants are co-sharers. The suit land is thus, part of 256 kanal 16 marla which is a joint khata and no partition has taken place. It is contended that it is established position in law that no injunction can be granted in favour of or against a co-sharer.

9. It is further submitted that the suit of the plaintiffs was decreed on the ground that the plaintiffs were shown to be in exclusive possession of the land in dispute as per the Jamabandi (Ex.P2). Learned counsel contends that this approach of the learned Courts below is



incorrect and perverse as in the Jamabandi, in Khatoni No.159, three persons are shown to be in possession i.e. the two plaintiffs and one Sandeep Singh. It is submitted that though it is the pleaded case of the plaintiffs that they were filing the suit on behalf of the said Sandeep Singh also, however, they had miserably failed to produce and prove any GPA to show that he is ad idem with the plaintiffs in the filing of the suit.

10. It is submitted even the Jamabandi (Ex.P2) does not show the plaintiffs to be in exclusive possession of the suit land measuring 56 kanal 11 marla. It is submitted that Sandeep Singh is also shown to be in possession of the land along with the plaintiffs. Therefore, the finding of the learned Courts below that the plaintiffs are in exclusive possession of the suit land, is contrary to the record. Moreover, the Jamabandi (Ex.P2) is a rebuttable document. It is submitted that for the afore-stated reason, the learned Courts below have committed grave illegality by granting injunction in favour of the plaintiffs as they are none else but the co-sharers of the appellants. It is reiterated that it is settled law that no injunction can be granted against a co-sharer and in favour of a co-sharer.

11. Learned counsel for the appellants further contends that the plaintiffs have even withheld the Sale Deed vide which they purchased the land from the other co-sharer. It is submitted that had the plaintiffs produced the said Sale Deed it would have been the clear and best evidence to prove as to whether the possession of any specific parcel of land was ever given to the plaintiffs by their vendor or not.



12. It is lastly argued that previously also a suit was filed by the plaintiff regarding the same land and against the same parties which was withdrawn on 21.5.2014. This fact has been admitted by plaintiff No.2/ Paramjeet Singh/PW1 before the learned lower Appellate Court on 20.07.2017. As such, the present suit was not maintainable. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees of the learned Courts below be set aside.

13. Heard.

14. It is undisputed that the total land holding is of 256 kanal 16 marla which is joint in nature in which the plaintiffs and defendants and appellants are co-sharers and in which no partition has taken place. However, as per the evidence on record specifically Jamabandi (Ex.P2), the exclusive possession of the plaintiffs was shown and proven over suit land measuring 56 kanal 11 marla. In order to prove their exclusive possession over the suit property, the plaintiffs also produced copy of khasra girdawari from Sauni 2013 to Harri 2014 (Ex.P3), copy of application for correction of girdawari (Ex.P4) and order dated 29.01.2014 passed by Assistant Collector (Ex.P5). The plaintiff No.2 had himself stepped into the witness box as PW1 and tendered into evidence the above said documents to prove the exclusive possession of the plaintiff over the suit property along with said Sandeep Singh. As the exclusive possession of the plaintiffs over the suit property stood proven



on record, it has been rightly held that the appellants have no right to disturb their possession.

15. It is further my considered view that a most just and reasonable order has been passed by the learned Courts below. It has been correctly observed that the defendants are at liberty to seek partition of the property by filing appropriate proceedings as follows: *"....plaintiffs are entitled to protect their possession over the suit property, but this will be subject to right of the partition by the defendants. Defendants have the remedy to file application for partition before revenue authorities. This court is of the view that defendants have no right to interfere into the possession of the plaintiffs and further from dispossessing the plaintiff from the suit property. This court is of the view that this judgment shall have no effect on the rights of the parties during the partition proceedings before revenue authorities, if any of the parties apply for partition proceedings..."*

16. As regards the plea of the appellants that the present suit was barred by principle of res judicata, I find no merit in the same as admittedly the previous suit filed by the plaintiffs was dismissed as withdrawn vide order dated 21.05.2014. As such, the previous suit was not decided on merits; and is therefore not barred by res judicata.

17. It has also been argued by the appellants that the plaintiffs had failed to produce the sale deed vide which they acquired title over the suit property, to identify whether a particular part was sold



to them by their vendor. However, the said argument is liable to be rejected as it is contended that from the Sale Deed it would be evident that the plaintiffs had purchased 1760/4355 share out of 256 kanal 11 marla.

18. Moreover, before parting, it may be pointed out that the present appeal is of the year 2019 and notice has not yet been issued in the same as it has been adjourned either at request of or due to non-appearance of learned counsel for the appellants on 10.05.2022, 19.09.2023, 16.11.2023, 15.04.2024, 22.05.2024 and 05.08.2024.

19. As such, for the afore-stated reasons I find no ground is made out to interfere in the well-reasoned judgments of the Id. Courts below. The present appeal is **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

**04.02.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**