



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-6515-2018 (O&M)

Date of Decision: 25.07.2025

Krishan

....Appellant

Versus

Kartar Singh

....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Chirag Sharma, Advocate for
Mr. Shilak Ram Hooda, Advocate for the appellant.

Mr. KetanAntil, Advocate for the respondent.

NIDHI GUPTA, J.

CM-18315-C-2018

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 117 days in filing the accompanying appeal.

Heard.

For the reasons stated in the application which is supported by an affidavit, the same is **allowed**; and delay of 117 days in filing the accompanying appeal is condoned.

RSA-6515-2018 (O&M)

1. The present second appeal has been filed by the plaintiff against the concurrent judgment and decrees of the Courts below whereby the suit for permanent injunction with consequential relief of mandatory



injunction filed by the appellant has been dismissed by both the Courts below.

2. It is, *inter alia*, submitted by learned counsel for the appellant that both the learned courts below have wrongly glossed over the fact that there is no relationship of co-sharer between the parties to the litigation as the respondent/defendant had purchased the portion of plot from the brother of plaintiff and much before purchase the plaintiff got his exclusive share in the family settlement and immediately thereafter he constructed boundary wall around his exclusive portion which had come in his share in the family settlement between the family members and in this way much before purchase of property by defendant the share of the brothers had been separated. Hence holding the defendant as co-sharer alongwith plaintiff is absolutely wrong and illegal and the impugned judgments and decrees have been based by both the learned courts below assuming the plaintiff and respondent co-sharers. Hence the illegality and perversity has cropped up in the impugned judgments and decrees which are liable to be set aside on this sole ground.

3. Further, it is submitted that both the learned courts below have been oblivious in ignoring the stringent documentary evidence Exhibited in the case which proves that the defendant purchased 300 sq.yard land of the shares of Rajinder, Jagdish, Varinder and Krishan and he claims that he purchased the aforesaid land not by registered sale deed but orally and in this view of the matter relying upon this fact by both the Courts below is unsustainable in eyes of law and raises a question that



how a oral purchaser can become the co-sharer with the exclusive holder of the property quite separate from the persons from whom the defendant has purchased. This aspect of the case has been wrongly ignored by both courts below.

4. Learned counsel also submits that the case of the plaintiff is well proved by deposition of PWs and documentary evidence which have remained unshaken by the defendant and the findings of both the learned courts below have been perverse, based upon no evidence and erroneous which cannot be sustained in eyes of law. Hence the judgments and decrees of both the learned courts below are liable to be set aside in the interest of justice. Further, both the learned courts below have committed exorbitant error in holding that the appellant/plaintiff has failed to prove the family settlement by producing his mother and other brothers in the witness box and in this way he has withheld the material evidence.

5. It is submitted that since the plaintiff had earlier become exclusive owner of his share in the plot by way of family settlement hence the necessity of proving the family settlement on the basis of cogent evidence is not there because there is no dispute regarding the family settlement and on the other hand when family settlement had come in operation between the co-sharers before purchasing the land of other co-sharers by defendant then the question of proving family settlement is not of essence and the rightful claim of the plaintiff cannot be refuted on the ground that he failed to prove family settlement on cogent evidence. Hence the impugned judgment and decrees of both the Courts below



being based on wrong presumption are liable to be set aside on this sole ground.

6. *Per Contra*, learned counsel for the respondent-defendant vehemently opposed the prayer made on behalf of the plaintiff and submits that it is the own case of the plaintiff as pleaded in the plaint that the defendant is a co-sharer in the suit land. Even as per the documentary evidence produced by the plaintiff himself, it was proven that the suit property was joint in nature. It is submitted that as per established precepts of law '*injunction cannot be sought against a co-sharer*'. Accordingly, learned counsel prays for dismissal of the present second appeal.

7. No other argument has been raised by learned counsel for parties. I have heard learned counsel and perused the case file in detail.

8. I find no merit whatsoever in the submissions advanced on behalf of the appellant-plaintiff. It is the own pleaded case of the plaintiff in the plaint that: "*The plaintiff is co-sharer and joint possession holder in the plot/land*" A bare reading of the above averment made by the plaintiff in the plaint shows that the plaintiff has himself admitted that he is co-sharer of the suit property with the defendant. It is established precept of law that admission is the best evidence. As such, in the view of the admitted position that both parties are co-shares, injunction could not have been granted in favour of the plaintiff. The present appeal deserves to be dismissed on this short ground itself.



9. Reliance may be placed upon a judgment of this Court in *Subhash Chander and others vs. Amarjit and others, Law Finder Doc Id #2091875*, wherein it has been held that a co-sharer cannot seek an injunction restraining another co-sharer from alienating a specific portion of the joint property, raising construction, or demolition without demonstrating that such acts are detrimental to their interests, and without seeking partition. Head note B of the aforesaid judgment reads as follows:

“B. Co-sharers-Injunction against another co-sharer-Legal principles reiterated-Mere exclusive possession or construction by one co-sharer in the common property does not entitle another co-sharer to seek an injunction unless it diminishes the value or utility of the property or is detrimental to the interests of the other co-sharers.”

10. The plaintiff had further pleaded that suit property falls in the name of his mother namely, Smt. Risalo Devi and his brother Jagdish (since deceased). Said Jagdish had sold his share of land to the defendant and after purchasing the same, the defendant had constructed a wall on the suit property. It was contended by the plaintiff that the wall constructed by the defendant was illegal. Contrary to his own assertion, plaintiff has now sought to state that the suit property was not joint and that a mutual Family Settlement had been entered into between the plaintiff and his other family members pursuant to which the suit property stood partitioned. However, the plaintiff has miserably failed to prove any such Family Settlement. Plaintiff has not led any evidence in



this regard. Even no effort was made by the plaintiff to examine his mother who had ostensibly given the suit property to him and his brother-Jagdish in the purported Family Settlement. The plaintiff has even failed to examine his other brothers whose rights had been allegedly ignored by his mother by giving the suit property only to the plaintiff and his deceased brother-Jagdish in a Family Settlement. Therefore, neither any oral nor the documentary evidence was produced by the plaintiff to prove that any family settlement has taken place.

11. Further, even as per the revenue Record/Jamabandi for the year 2005-06 (Ex. P-1) the suit property is shown to be joint in nature. Perusal of Jamabandi (Ex. P-1) reveals the suit property to be in joint possession of defendant-Kartar Singh and Smt. Risalo Devi/mother of the plaintiff. As such, in fact, the plaintiff has even failed to prove his possession over the suit property. Thus, any theory put up by the plaintiff that the suit property has been partitioned between his brother and himself is negated from the documentary evidence on record. It has been admitted by learned counsel for the plaintiff that partition has not yet taken place.

12. On the other hand, in the revenue record the defendant is recorded as the owner of half share of the entire land. As such, he is co-sharer along with Smt. Risalo Devi and others. The plaintiff is not even recorded as owner or as possessor of the suit property. In any event, claim of the plaintiff against co-sharer/present defendant, is not maintainable.



13. It may also be pointed out that the respondent had constructed his house over part of the suit property 6-7 years before filing of the present civil suit. Admittedly, at that time no objection has been raised by the appellant-plaintiff.

14. In view of the above, no ground is made out to interfere in the concurrent findings returned by both the Courts below.

15. In view of the above, present appeal is **dismissed**.

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

25.07.2025
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No