

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****Date of Decision: March 12, 2025  
RSA No.1546 of 2022 (O&M)****Seth Nainsukh Dass Sukhram Dass  
Parivarik Dharmarth Trust (Regd.)****. . . . Appellant**

Vs.

Shyam Singh and another

**. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Mr. Abhilaksh Grover, Advocate for the appellant.**DEEPAK GUPTA, J.**

Suit for declaration with consequential relief for permanent injunction regarding property in dispute filed by plaintiff-Trust (*appellant herein*) was dismissed by the trial Court on 16.03.2015; and said judgment has been upheld by the First Appellate Court on 29.02.2020, in the appeal filed by the plaintiff-appellant. Against these concurrent findings, plaintiff has approached this Court by way of present regular second appeal.

2. The dispute pertains to land measuring 06 kanals, 10 marlas, situated within the municipal limits of Municipal Committee, Farrukh Nagar, Tehsil Farrukh Nagar, District Gurgaon as detailed in the plaint. It was claimed by the plaintiff that earlier it was an unregistered trust. Later on, it got registered with the Registrar of Societies, Gurgaon. The suit property consists of Dharmshala, Mandir, Marriage Pandal, Piao etc. Initially, the suit property was owned by Seth Nainsukh Dass Sukh Ram Dass. Their descendants decided to constitute a trust to utilize the suit property for the welfare of the public at large. The trust was managing and controlling the disputed property through a Managing Committee. The meetings of the Managing Committee were being attended even by defendant No.2 and his father Udai Chand. It is alleged that defendants (*respondents herein*) along with their associates tried to encroach upon the suit property on 09.08.2008, but were thwarted in

their attempts due to timely intervention of the police and respectables. It is further alleged that defendant No.2 has illegally sold a portion of the suit property to defendant No.1 through a registered sale deed dated 15.07.2008 without having any right to alienate the same and now defendant No.1 is threatening to further alienate the said portion. Defendants are also threatening to encroach upon portion 'ABCD' of the suit property without having any right. With these allegations, plaintiff prayed for declaration that impugned sale deed bearing Vasika No.1178 dated 15.07.2008 is null, illegal and void and not binding on it. As a consequential relief, plaintiff prayed for decree of permanent injunction to restrain the defendants from encroaching upon the suit property by way of demolishing its boundary wall or alienating it in any manner.

3. Defendants opposed the claim. They denied the plaintiff to have any concern with the suit property. According to them, there are numerous co-sharers of the suit property. Udai Chand was one of the co-sharers and upon his demise, defendant No.2 along with his brothers succeeded the share of Udai Chand vide mutation No.7235 sanctioned on 04.06.2006. Defendant No.2 asserted that being in possession of his share in the suit property, he validly sold the said share for valuable consideration by way of registered sale deed dated 15.07.2008 in favour of defendant No.1 and now defendant No.1 along with his brother-in-law has raised construction thereon. Defendants further stated that plaintiff has no right to maintain the suit till the suit property is partitioned by metes and bounds. Prayer was made for dismissal of the suit.

4. After framing necessary issues and taking evidence produced by the parties, the trial Court dismissed the suit on 16.03.2015. As noticed earlier, appeal filed by the plaintiff was dismissed and the findings of the trial Court were upheld by the Appellate Court vide judgment dated 29.02.2020.

5. Assailing the aforesaid findings, it is contended by learned counsel for the appellant that the Courts below have failed to appreciate the

evidence in right perspective and that even the document Ex.PX was not taken into consideration.

6. Before considering the contention, it will be apt to reproduce the relevant portion of the observations made by the First Appellate Court based upon evidence produced during trial. These read as under:-

“8. In the present case, the only moot question which requires determination is that as to whether the disputed property was ever donated by its various co-owners including the respondent/defendant no.2 or his predecessors to the appellant/plaintiff trust and thereafter the same ever vested in the appellant/plaintiff trust. In the revenue record, so placed and proved on the file on behalf of the appellant/plaintiff with respect to the disputed property, which is jamabandi of village Farrukh Nagar, Tehsil and District Gurugram, relating to the year 2001-02 and proved on the file as Ex.P3, the disputed property has been shown to be jointly owned and possessed by several co-owners and there is no mention of the name of the appellant/plaintiff trust either in the column of ownership or possession of the disputed property. There is also no document placed or proved on the file on behalf of the appellant/plaintiff whereby showing that the descendants of said Seth Nainsukh Dass Sukhram Dass and various co-owners, whose names have been depicted in the abovesaid jamabandi Ex.P3, ever donated their respective shares to the appellant/plaintiff trust by executing any registered document as required under the law. Merely be reason of the fact that the construction of Dharamshala, Mandir, Marriage Pandal and Piao etc. has been raised over the disputed property, the ownership of the disputed property does not automatically vests in the appellant/plaintiff trust unless and until the various co-owners of the disputed property would donate their respective shares in the appellant/plaintiff trust. ....

9. From the revenue record so placed on the file, it is apparent that the disputed property is a joint one and is yet to be partitioned by metes and bounds between its various co-owners. Neither the respondent/defendant no.2 nor his father Udai Chand has ever been shown to be in exclusive possession of any portion of the disputed property in the revenue record, so

placed and proved on the file. In the copy of sale deed Ex.DW1/1 dated 15.07.2008, so executed by the respondent/defendant no.2 with respect to the land measuring 3 marlas 2 sarsai, which is part of the disputed property, there is mention of sale of 1/40th share only and no specific portion out of the disputed property has been shown sold to the respondent/defendant no.1. Even in the certified copy of mutation no.7331, so proved on the file as Ex.DW1/2, which is sanctioned on dated 25.07.2008 on the basis of abovesaid sale deed dated 15.07.2008, there is mention of transfer of 1/40th share only in favour of the respondent/defendant no.1 and no specific portion has been transferred in his favour out of the disputed property. Even the respondent/defendant no.1, when stepped into the witness box as DW1 and was cross-examined in this regard, then he has shown his ignorance about the fact of partition of the disputed property. As per settled law, any alienation out of the joint property by a co-owner would amount to alienation of the property out of the share. Even the alienation of any specific khasra number or specific portion amounts to alienation of the share which is subject to adjustment at the time of partition. It is also well settled that a co-owner cannot seek relief of injunction against his other co-owner. In such a situation, the respondent/defendant no.1 may raise construction over his undivided share in the disputed property only after getting the disputed property partitioned by metes and bounds from the concerned authority.”

7. It is clear from the above-said observations made by the First Appellate Court based upon the evidence on record that it is Seth Nain Sukh Dass Ram Dass, who along with various other co-owners, are depicted in the column of ownership in the jamabandi in respect of the suit property. No evidence was produced on file by the plaintiff trust to show that co-sharers of the suit property ever donated their respective share to the plaintiff-trust by executing any registered document. Simply because Dharmshala, Mandir, Marriage Pandal etc. have been constructed over the suit property, the title of the same did not automatically vest in the plaintiff-trust, unless & until all the co-sharers of the suit property had donated their respective share.

8. Document Ex.PX as referred by learned counsel for the appellant is copy of mutation No.7452 dated 10.12.2008, which would reveal that based upon a registered gift deed dated 03.10.2008, some of the co-sharers, namely, Suresh Chand S/o Shri Krishan Chand, and Shri Nath and Mahesh Chand Ss/o Paras Ram gifted their 3/130 share in the suit property in favour of the plaintiff-trust. This document at the most would reveal that plaintiff-trust is the co-sharer of the suit property to the extent of 3/130 share.

9. Learned counsel for the appellant could not refute the factual position that defendant No.2 was recorded to be one of the co-sharer in the suit property and as such, he was within his rights to transfer the land out of his share to defendant No.1. It has rightly been observed by the First Appellate Court that as per sale deed dated 15.07.2008 assailed by the plaintiff, land measuring 03 kanals 02 sarsai only forming part to the suit property has been sold and there was specific mention in the sale deed that it was 1/40 share. No specific portion of the disputed property was sold to defendant No.1.

10 In view of the aforesaid facts and circumstances, the First Appellate Court has rightly held that plaintiff was not entitled for the declaration prayed by it nor the relief of injunction could be granted in favour of one co-sharer against the other co-sharer.

11. Keeping in view the aforesaid discussion, this Court does not find any ground to interfere in the well reasoned concurrent findings recorded by the Courts below. As such, finding no merit in the present appeal, the same is hereby dismissed.

**March 12, 2025***Sarita***(DEEPAK GUPTA)****JUDGE**

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No