

PBGD020009972017



Presented on : 23-05-2017
Registered on : 24-05-2017
Decided on : 16-08-2018
Duration : 1 years, 2 months, 24 days

IN THE COURT OF
Additional Civil Judge (Senior Division) AT ,Gurdaspur
Presided Over by Sh Amandeep Singh
Cs/582/2017

Kirpal Singh aged 55 years son of Sh. Sohan Singh son of Sh. Mangal Singh, resident of village Roranwali Tehsil and District Gurdaspur.
..... Plaintiff

Versus

Waisakha Singh son of Sh. Sohan Singh son of Sh. Mangal Singh, resident of village Roranwali Tehsil and District Gurdaspur.
.... Defendant

Suit for permanent injunction restraining the defendant from alienating, mortgaging and disposing off in any manner specific portion and more than his share out of the joint land measuring 31 kanals 4 marlas comprised in Khewat no.26, khatauni no.34, Rect. no.22, Killa nos. 9/1 (4-4), 12/1 (4-0), 12/2 (4-0), 19/1/1 (3-0), Khewat no.201, Khatauni no.409, Rect. No.22, Killa nos. 8 (8-0), 13 (8-0), situated in the revenue estate of village Roranwali, Had Bast no.488, Sub Tehsil Gurdaspur, Tehsil and District Gurdaspur, as entered in the Jamabandi for the years

Present: Sh. U.R.Sharma, Adv counsel for plaintiff.
Sh. S.S.Randhawa, Adv counsel for defendant.

J U D G M E N T

The plaintiff has filed the present suit for permanent injunction against the defendant.

2. Brief facts as put forth in the plaint are that the land measuring

31 kanals 4 marlas, fully detailed in the head note of the plaint is joint between the plaintiff, defendant and other co-sharers and no partition of the suit land has been effected so far and some portion of the suit land is adjoining to the road and some portion is away from the road and which portion is adjoining to the road is more valuable than the other and the land adjoining to the road is commercial one and the defendant being head strong person is threatening to alienate, mortgage, dispose off specific portion or more than his share out of the suit land, illegally and forcibly, without getting the same partitioned. It is further stated that the plaintiff is confined in Central Jail, Gurdaspur, as he has been convicted in case under Section 302 IPC and now in these days, the plaintiff is on parole leave from 24.04.2017 to 06.06.2017 and the defendant is taking the undue benefit of the plaintiff in Jail, as such he wanted to sale out the specific portion out of the suit land adjoining to the road. The plaintiff has requested the defendant to admit his claim, but he refused to do so. Hence, the present suit.

3. Upon notice, defendant appeared through his counsel and by filing written statement took preliminary objections that the present suit is not maintainable; that the plaintiff has not come to the Court with clean hands; that the plaintiff has no cause of action or any locus standi to file the present suit and that the plaintiff has dragged the answering defendant into unwarranted false litigation, as such, the answering defendant is entitled to special costs. On merits, it is admitted that land adjoin to the road is commercial one. It is stated that the suit land is not joint between the plaintiff, defendant and other co-sharers, rather the same stood partitioned between all the co-sharers in family settlement and land comprised in

Rect.22 Killa 8 (8-0) and 13 (8-0) is adjoining with the road and out of this land comprised in killa no.13 (8-0) is in possession of the plaintiff, while land comprised in killa no.8 (8-0), is in possession of Lakha Singh i.e. brother of the plaintiff and defendant and the land given to the plaintiff in family settlement is rear portion which is not abutting with the road and is having much less value than the land comprised in killa no.8 (8-0) and 13 (8-0). It is further stated that brother of the plaintiff and defendant namely Lakha Singh has already sold above mentioned land comprised in killa no.8 (8-0) on the basis of his possession by virtue of family settlement, as such, the defendant has also every right to enjoy the land adjoining to the road and the value of the land given to the defendant in family settlement is much less than the land given to the plaintiff and the plaintiff has not come to the Court with clean hands and filed the present suit by concealing all the facts mentioned above and the plaintiff who has not come to the Court with clean hands is not entitled to discretionary relief of injunction. It is further stated that the defendant is ready to exchange his land with the land in possession of the plaintiff and the plaintiff is head strong and influential person and in connivance with his brother Lakha Singh and father have already given land to the defendant which is away from the road and is of inferior quality and given him commercial land and plaintiff did not raise any objection, when their brother Lakha Singh alienated commercial land abutting to road comprised in killa no.8 (8-0). It is further stated that the defendant is not in possession of land adjoining to the road, hence question of issuance of any kind of threat on his part does not arise and the defendant has each and every right to enjoy his possession and to deal the same as per his wishes or

needs on the basis of family settlement. Remaining averments made in the plaint have been denied and ultimately prayer for dismissal of the suit has been made.

4. Replication to the written statement of defendants was filed by reiterating the facts as mentioned in the plaint and denied that is made in the written statement. From the pleadings of the parties, the following issues were framed by the then Civil Judge (Jr.Divn.), Gurdaspur vide order dated 12.09.2017:-

1. Whether plaintiff is entitled for permanent injunction as prayed for ?OPP
2. Whether the suit is not maintainable ?OPD
3. Whether the plaintiff has not come to the Court with clean hands ?OPD
4. Whether the plaintiff has no cause of action to file the present suit ?OPD
5. Relief.

5. In order to prove his case, plaintiff Kirpal Singh examined himself as PW1 and thereafter, plaintiff closed his evidence after tendering into evidence copy of Jamabandi Ex.P.1.

6. In order to prove his own case and to rebut the evidence of plaintiff, defendant Waisakha Singh examined himself as DW.1 and thereafter, Ld counsel for defendant closed the evidence on behalf of defendant after tendering into evidence copy of Jamabandi for the year 2016-17 Ex.D1.

7. I have heard the learned counsel for the plaintiff and defendant and have carefully gone through the file and documents minutely. My issue-wise findings are as under:

ISSUES NO.1 & 2

1. Whether the plaintiff is entitled for permanent injunction as prayed for ?OPP

2. Whether the suit is not maintainable ?OPD

8. Both these issues being interconnected are taken up together in order to avoid any kind of repetition or discussion. Onus to prove issue No.1 was upon the plaintiff and that of issue no.2 was upon the defendant and in order to prove his case, plaintiff Kirpal Singh examined himself as PW.1, who while appearing into the witness box tendered into evidence his duly sworn affidavit Ex.PW1/A by way of examination-in-chief, wherein he reiterated the entire facts as stated in the plaint, which need not be repeated here for want of repetition. He further produced on record copy of Jamabandi for the year 2011-12 Ex.P.1.

9. On the other hand, in order to prove his case, defendant Waisakha Singh examined himself as DW.1, who while appearing into the witness box tendered into evidence his duly sworn affidavit Ex.DW1/A by way of examination-in-chief, wherein he reiterated the entire facts as stated in the written statement, which need not be repeated here for want of repetition.

10. Now, the plaintiff has filed the present suit for permanent injunction restraining the defendant from alienating, mortgaging and disposing of in any manner specific portion and more than his share out of the joint land measuring 31 kanals 04 marlas, fully detailed in the head note of the Judgment. The plaintiff in his pleadings has stated that suit property measuring 31 kanals 4 marlas is joint between the parties and other co-sharers and no partition has been effected so far and some portion of the suit

property is adjoining to the road which is more valuable and the defendant being head strong person is threatening to alienate/dispose of specific portion out of the suit property, illegally and forcibly without getting same partitioned. On the other hand, the defendant in his written statement has denied the fact that the suit property is joint between the parties and other co-sharers.

11. The plaintiff in order to prove his case has examined himself as PW.1 and has also produced on file Jamabandi for the year 2011-12 Ex.P1 and perusal of the same shows that the suit property is joint between the parties and the same has not been partitioned by any Competent Court of law, however Ld counsel for the defendant has vehemently argued that the plaintiff has no locus standi to file the present suit nor the present suit is maintainable in the present form, as the defendant being co-sharer/co-owner has inherit right to sell his share of land from the property, but the Ld counsel for the plaintiff has argued that the defendant is threatening to alienate specific portion from the joint property.

12. Hon'ble Punjab and Haryana High Court in its full bench decision, **2008 (4) CCC 002 (PH) FB**, in para no.16 of the Judgment has held that a joint owner/co-owner, just as an individual owner, has inherit right to alienate the joint property, limited to the extent and nature of share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as joint owner namely his specific share or a part thereof in the community of joint owners with commonality of possession. Further in para no.18 of the Judgment Hon'ble High Court has held that a co-owner has an interest in the entire property and also in every

parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding, what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from specific khasra/killla number, forming part of specific rectangle number, but being a part of joint khewat, would, in view of nature of the rights conferred upon a co-sharer be deemed to be the sale of share from the joint khewat and such a vendee would be deemed to be co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

13. Similarly, Hon'ble Punjab and Haryana High Court in, **2015 (1) PLJ 190** has specifically held in para no.10 of the Judgment that every co-sharer has a right on every inch of the suit land and a co-sharer has no right to claim injunction against all other co-sharers in respect of joint holding and the only remedy available is to get the joint holding partitioned.

14. Further, Hon'ble Punjab and Haryana High Court, in **2011 (3) CCC 162 (PH)** has held in para no.12 of Judgment that relief of injunction can be sought by a co-sharer against other co-sharers when such a co-sharer happens to be in exclusive possession of the land to the exclusion of other co-sharers but when the possession of all the co-sharers is joint, relief of injunction cannot be sought by either of the co-sharers and the only relief which is available to the co-sharer is to seek partition by metes and bounds.

15. Similarly, in the present case, the suit property between the plaintiff and defendant is joint and the plaintiff is not in exclusive possession over the suit property to the exclusion of other co-sharers and accordingly, no relief of injunction can be granted to the plaintiff and the only remedy

available to the plaintiff is to seek partition of the suit property by metes and bounds.

16. So, accordingly, in view of above discussion, both these issues are decided against the plaintiff and in favour of defendant.

ISSUE NO.3 and 4

3. Whether the plaintiff has not come to the Court with clean hands ?OPD

4. Whether the plaintiff has no cause of action to file the present suit ?OPD

17. The onus to prove both these issues was upon the defendant. However, learned counsel for the defendant has neither raised any substantial arguments on these issues nor pressed the same while at the stage of arguments and accordingly both these issues are decided against the defendant being not pressed.

RELIEF

18. In view of findings of this Court on the above said issues, the suit of the plaintiff is hereby dismissed with costs.

19. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room, Gurdaspur, after due compliance.

Date : 16-08-2018 (**Sh Amandeep Singh**)
Additional Civil Judge (Senior Division)
Gurdaspur
UIDPB0271

Dictated on :16-08-2018
Transcribed on :16-08-2018
checked on : 16-08-2018
Signed on :16-08-2018
Rano Devi (JW)

(**Sh Amandeep Singh**)
Additional Civil Judge (Senior Division)
Gurdaspur
UIDPB0271

Kirpal Singh vs Waisakha Singh

Present: Sh. U.R.Sharma, Adv counsel for plaintiff.
Sh. S.S.Randhawa, Adv counsel for defendant.

Ld counsel for the plaintiff closed the evidence on behalf of plaintiff.

Arguments heard. Vide separate detailed judgment of this Court of even date, the suit of the plaintiff has been dismissed with costs.

Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room, Gurdaspur, after due compliance.

Announced in open Court on
Dated:16.08.2018
Rano Devi JW

(Amandeep Singh), PCS,
Additional Civil Judge (Sr. Division),
Gurdaspur.
UIDPB0271

