

**(2010) 11 P&H CK 0509****High Court Of Punjab And Haryana At Chandigarh****Case No:** Regular Second Appeal No. 4107 of 2010 (O and M)

Krishan and Others

APPELLANT

Vs

Gulab Singh and Others

RESPONDENT

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**Date of Decision:** Nov. 1, 2010**Hon'ble Judges:** Gurdev Singh, J**Bench:** Single Bench**Final Decision:** Dismissed

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**Judgement**

Gurdev Singh, J.

This is the second appeal preferred by the Appellants/Defendants No. 1 to 3 against the judgment and decree dated 7.10.2010 passed by the Additional District Judge, Hisar, vide which he dismissed the appeal preferred against the judgment and decree dated 5.8.2008 passed by the Civil Judge (Junior Division), Hisar, decreeing the suit of Respondent No. 1/Plaintiff for permanent injunction, restraining the Defendants from making any construction on specific portion of plot Nos. 602, 621 and 622 and also for further restraining them to make construction on more than their share till the partition takes place between all the co-owners.

2. Plaintiff has pleaded in his plaint that his father; namely Harphul was the owner in possession of 517/1728 share in the total joint land measuring 86 kanals 8 marlas and after his death the same was inherited by him, his brother Rajender and sister Parvati and as such he became co-sharer therein. Out of this land, Defendants No. 1 to 3 purchased 9/1728 share (0-9 marla) and got a mutation sanctioned in their favour on 22.9.2005. No partition has taken place between them so far and as such those Defendants cannot raise any construction on any specific portion of plot Nos. 602, 621 and 622, which have been carved out from the joint land.

3. The suit of the Plaintiff was contested by these Appellants/Defendants No. 1 to 3. They pleaded in the written statement that private partition had already taken place, in which plot No. 602 had fallen to the share of father of the Plaintiff and mutation of inheritance was sanctioned accordingly in his favour and in favour of his brother

and sister, who have been impleaded as Defendants No. 22 and 23 and those Defendants out of their share sold 9 marlas of land in their favour vide sale deed dated 25.8.2005. They had already raised construction up to the level of lintel when the present suit was filed.

4. On the pleadings of the parties, issues were framed.

5. To succeed in the case, Plaintiff entered the witness box as PW1 and proved on record a number of documents. On the other hand, Defendants examined Rajender DW2 and Devi Lal DW3. Defendant No. 1 entered the witness box as DW1.

6. After going through that evidence and hearing the counsel for the parties, trial court decided all the issues in favour of the Plaintiff and accordingly decreed his suit as aforesaid.

7. First appeal preferred by Appellants/Defendants No. 1 to 3 against the judgment and decree was dismissed.

8. I have heard learned Counsel for Defendants No. 1 to 3/Appellants.

9. It has been submitted by the counsel for Defendants No. 1 to 3/Appellants that these Defendants proved on record that they are coming in possession of 9 marlas of land so purchased by them and that being co-sharers they have every right to raise construction therein and other co-owners cannot restrain them from doing so. According to him, substantial question of law arises in the present appeal, "as to whether the Defendants have been able to prove that they are coming in possession of specific portion of the joint land and can raise construction therein and that the Plaintiff has no right to restrain them from raising construction"?

10. Findings of fact were recorded by the lower courts to the effect that Defendants No. 1 to 3 failed to prove that they are in possession of specific portion of plot No. 602, or any other parcel of the joint land. It is not the contention of their counsel that there is any such misreading of evidence while recording that finding. Even in the sale deed, which was so executed in their favour, it is not recited that possession of specific portion of the joint land was given to them. Their counsel also tried to refer to the cross-examination of the Plaintiff in support of his contentions, but the Plaintiff never admitted Defendants No. 1 to 3 to be in possession of specific portion of the joint land. The only admission made by him was to the effect that they purchased a share in plot No. 602.

11. No substantial question of law arises in the present appeal. Once, the Plaintiff was able to prove that Defendants No. 1 to 3 were not coming in exclusive possession of any specific portion of the joint land, the relief of perpetual injunction was rightly granted in his favour, restraining the Defendants from raising any construction in the joint land.

12. The appeal is dismissed accordingly.