(2010) 10 P&H CK 0318

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3818 of 2010 (O and M)

Karam Singh and Another		APPELLANT
	Vs	
Lakhbir Kaur and Others		RESPONDENT

Date of Decision: Oct. 25, 2010

Citation: (2011) 162 PLR 698

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Judgement

Rakesh Kumar Garg, J.

This is Plaintiffs'' second appeal challenging the judgment and decrees of the courts below whereby their suit for permanent injunction restraining the Respondents Nos. 1 to 5 from interfering in the possession of the Appellants except in due course of law, was dismissed.

2. As per the averments made in the suit, Appellants and Defendant No. 1, Lakhbir Kaur are the co-sharers/co-owners in respect of the suit land. Respondent No. 1 (Defendant No. 1) had sold some land to Defendants Nos. 2 and 3 out of joint khata. The Appellants are in exclusive and peaceful possession of the land measuring 6K-13M comprised in khewat No. 42/23 along with other land. The land has not been partitioned so far. The Plaintiffs have made constructions of residential houses as well as shops on the aforesaid land. Defendants have threatened to interfere in the peaceful possession of the Appellants. Hence, this suit.

3. Upon notice, Respondents Nos. 1 to 5 appeared and filed a joint written statement raising various preliminary objections. On merits, it was denied that Plaintiffs and Defendant No. 1 were co-sharers in respect of the suit land. It was stated that actually Defendants Nos. 2 to 5 were co-sharers in the joint khata on the basis of the various sale deeds. It was denied that Plaintiffs were in exclusive possession of the land comprised in khasra No. 42/23(6-13) out of the suit land. It

was stated that the aforesaid khasra number was in possession of Defendants. It was further denied that Plaintiffs have constructed a kotha or that they have constructed a residential house and shops therein as alleged. Dismissal of the suit was prayed for.

4. Plaintiffs filed replication controverting the allegations made in the written statement while reiterating the facts stated in the plaint.

5. From the pleadings of the parties, the following issues were framed:

1. Whether the Plaintiffs are entitled for permanent injunction as prayed for? OPP

2. Whether the suit as framed is not maintainable in the eyes of law? OPD

3. Whether the Plaintiffs have got no locus standi to file the present suit? OPD

4. Whether the Plaintiffs have not come to the Court with clean hands? OPD

5. Whether the Plaintiffs have suppressed the material facts from the Court? OPD

6. Relief.

6. The trial Court dismissed the suit while holding that Lakhbir Kaur, Defendant No. 1 was having the same status equal to that of Plaintiffs and therefore the Plaintiffs cannot claim that Lakhbir Kaur had not come in possession of khasra No. 42/23 after the death of Diwan Singh and the entries in the revenue record in the name of Diwan Singh are in no way helpful to the case of Plaintiffs.

7. The aforesaid judgment and decree of the trial Court was challenged by the Appellants before the Lower Appellate Court on the ground that after the death of Diwan Singh they, along with Respondent No. 1 came in exclusive possession of the suit land though Respondent No. 1 Lakhbir Kaur had sold about 15 marlas of land from the joint khata. Respondents Nos. 2 to 5 have become co-sharers but cannot claim possession over specific khasra numbers. The findings of the trial Court that Lakhbir Kaur was competent to deliver the possession was also wrong as Respondents Nos. 2 to 5 can claim possession only by seeking partition.

8. However, the aforesaid appeal was dismissed vide impugned judgment and decree. While dismissing the appeal, the Lower Appellate Court observed as under:

There is no dispute to the effect that the present Appellants and Lakhbir Kaur Respondents No. 1 are the successor-in-interest of Diwan Singh. There is also no dispute to the effect that said Diwan Singh was in exclusive possession of Khasra No. 42/23 (6-13). Copy of Jamabandi produced on file as Ex.P2 that pertains to the year 2001-02 also suggests so. It is no disputed here that Lakhbir Kaur Respondent No. 1 is none else but the widow of Meet Singh brother of Appellants. While replying on in entry in the Jamabandi Ex.P2, the Appellants have come forward with a version that after the death of Diwan Singh, they alongwith Lakhbir Kaur have entered into exclusive possession of said khasra number. That has been so claimed by the

Appellants in para No. 4 of the grounds of appeal. That be the position, the Respondent No. 1 Lakhbir Kaur alongwith Appellants so is in exclusive possession of Khasra No. 42/23 (6-13). Admittedly, she has sold about 40 marlas of land out of the joint khewat. Para No. 2 of the written statement, on merits filed by her suggests so. That means, she sold 2 Kanals of land. She being the co-owner of the disputed Khasra number to the extent of 1/3rd share being the widow of Meet Singh was competent to deliver the possession to that extent out of total land measuring 6 Kanals 13 Marlas of Khasra No. 42/23. The plea of Appellants that the Respondents Nos. 2 to 5 i.e. the vendees of Lakhbir Kaur can only seek possession by filing partition application is based on misunderstanding. A co-share in exclusive possession of the particular piece of land can well deliver the possession of that piece of land to his vendees. The learned court therefore has not committed any error factual or legal in dismissing the suit of the Plaintiffs/Appellants. The appeal as a result fails and is dismissed.

9. Still not satisfied, the Plaintiffs have filed the instant appeal submitting that the following substantial questions of law arise in this appeal:

1. Whether the impugned judgments dated 12.02.2009 and 28.07.2010 are sustainable and in accordance with law?

2. Whether the Appellants/Respondents have constructed their house in the suit land and the Respondents are entitled to take the possession of the suit land?

3. Whether Appellants/Plaintiffs are entitled for the relief claimed in the suit?

10. I have heard learned Counsel for the Appellants and perused the impugned judgment and decrees of the courts below.

11. Admittedly, the Appellants and Respondent No. 1 are the successor-in-interest of Diwan Singh. There is also no dispute that said Diwan Singh was in exclusive possession of khasra No. 42/23(6-13). On the basis of an entry in the jamabandi Ex.P-2, the Appellants have submitted that after the death of Diwan Singh they along with Lakhbir Kaur had entered into exclusive possession of the said khasra number but Lakhbir Kaur, who had sold about 40 marlas of land out of joint khewat; she being the co-owner of the disputed khasra number to the extent of 1/3rd share being the widow of Meet Singh was not competent to deliver the possession of the land measuring (6K-13M) comprised in khasra No. 42/23.

12. The 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. By purchasing share of land, out of joint khata from Respondents No. 1, Respondents Nos. 2 to 5 have become co-sharers in the joint khata along with Plaintiffs and

Defendant No. 1 and their status being equal and the possession being joint, the Plaintiffs cannot seek permanent injunction restraining them from using the land in their joint possession because each co-sharer has a right and authority to use the joint property in the husband-like manner without causing obstruction to exercise of similar right by other co-sharers. Since, Plaintiff/Appellants have failed to prove their exclusive possession of the suit property, therefore, no fault can be found with the findings of the courts below.

13. Thus, no substantial question of law arises.

14. Dismissed.