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2019 PLRonline 3017

Punjab And Haryana High Court

**Harinder Singh Madaan, J.**

Raghibir Singh v. Ramrati

RSA No. 429 of 2018 (O&M)

05.09.2019

**Specific Relief Act, S. 41(h) - Rights and liabilities of the co-sharers in the joint land - Plaintiff filed suit for grant of permanent injunction on the averments that the plaintiff and defendants are co-sharers in the suit land who in order to grab valuable portion of the joint land, also want to alienate specific portion to which, they have no right - If an efficacious remedy is available then no injunction can be granted - Suit for injunction is not maintainable where the plaintiff has equally efficacious remedy available and further remedy for getting share in joint property is partition and not injunction. *Ram Chander v. Bhim Singh*, (2008-3)151 PLR 747 (FB) , *Kishan Singh v. Sucha Singh*, (2008-2)150 PLR 707, relied.**

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**Harinder Singh Madaan, J.** - Briefly stated, the facts of the case are that plaintiff Raghibir Singh had filed a suit for grant of permanent injunction against defendants Smt. Sona Devi and Smt. Ramratti on the averments that the plaintiff and defendants are co-sharers in the suit land measuring 273 kanals 14 marlas situated at village Duloth, Tehsil and District Mohinergarh and in order to grab valuable portion of the joint land, the defendants want to raise construction over such valuable portion, which is adjacent to the road and can be used for residential and commercial purposes; they also want to alienate specific portion to which, they have no right. Feeling aggrieved, the plaintiff had brought suit in question.

2. On notice, both the defendants appeared and filed written statements contesting the suit. Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence.

3. After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 4.11.2014 dismissed the suit. A perusal of the judgment passed by the trial Court goes to show that on appreciation of the evidence adduced before it in light of the factual and judicial position, it had been observed that as revealed by perusal of jamabandi for the year 2003-04, defendant No. 1 is a co-sharer in the suit property and vide sale deed No. 1094 dated 6.8.2010 Ex. DW3/B, she alienated her share to defendant No. 2 and

mutation Ex. D2 reveals that defendant No. 2 is the owner in possession of 7 kanals 7 marlas of land. Reference to cross-examination of plaintiff, who appeared as PW1 has been given to the effect that wife of Sunda Ram had got share of her husband and now she has alienated the land to defendant No. 2 Ramratti and now Ramratti is in possession of the land. He had admitted that all the co-sharers are in possession of the land as per their share. The plea taken by the defendants that land has already been partitioned was rejected for the reason that the same was not got incorporated in the revenue record. The plaintiff was non-suited in light of the ratio of judgment *Ram Chander v. Bhim Singh*, (2008-3)151 PLR 747 (FB) dealing with rights and liabilities of the co-sharers in the joint land and in light of section 41(h) Specific Relief Act providing that if an efficacious remedy is available then no injunction can be granted. The trial Court has also referred to judgment by this Court in *Kishan Singh v. Sucha Singh*, (2008-2)150 PLR 707, to the effect that a suit for injunction is not maintainable where the plaintiff has equally efficacious remedy available and further remedy for getting share in joint property is partition and not injunction.

4. When the plaintiff feeling aggrieved by the judgment and decree passed by the trial Court went in appeal, he was unsuccessful there also and his appeal was dismissed by District Judge, Narnaul vide judgment and decree dated 6.2.2017 observing that findings of the lower Court do not call for interference and rather those were affirmed.

5. Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has filed the present Regular Second Appeal before this Court.

6. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

7. There is delay of 110 days in refiling of the appeal. Though an application under section 151 [CPC](#) for condonation of delay has been filed. However, the reasoning given therein is not convincing. On merits also, the appeal is bound to fail.

8. Learned counsel for the appellant has referred to judgment *Ramdas v. Sitabai*, 2011 (7) RCR (Civil) 9 by the Apex Court wherein it was observed that as undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement. However, this judgment does not help the appellant since the plaintiff himself appearing as PW1 in his cross-examination has admitted the fact that defendant No. 1 has got share of her husband and she has alienated the land to defendant No. 2 Ramratti, who is in possession over the land. He also admitted that all co-sharers are in possession of land as per their shares.

9. As regards the judgments *Ranjeet Singh v. Dhan Singh*, 2009 (11) RCR (Civil) 377 and *Amarjit Kaur v. Bikram Singh*, 2016 (3) ICC 186, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

10. As rightly observed by the Courts below the proper remedy for the appellant/plaintiff is

to go for partition, which he is not availing.

11. The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

12. No substantial question of law arises in this appeal.

13. Finding no merit in the appeal, the same stands dismissed accordingly.