2010 PLRonline 0103 PH
PUNJAB AND HARYANA HIGH COURT
JUSTICE VINOD K. SHARMA
Bhupinder Singh & others.......... Appellants
Versus
Roop Singh & another...... Respondents
RSA No. 640 of 2007 (O&M)
29.1.2009

Suit for permanent injunction – Co-sharer – If for the sake of arguments defendant/ appellants are taken to be co-sharer by way of purchase, still they can claim possession only by partition, as sale of share by co-sharer can entitle the vendee to symbolic possession.

A co-sharer cannot claim exclusive possession without a formal partition by metes and bounds. The vendee's right to possession arises only after partition, ensuring fair division among all co-owners.

Present : Mr. B.S. Bhalla, Advocate for the appellants. Mr. O.P. Hoshiarpuri, Advocate for respondents No.1 & 2.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal is directed against the judgments and decree dated 9.12.2005 and 12.9.2006 passed by the learned Courts below vide which suit filed by the plaintiffs-appellant for permanent injunction stands decreed.

The plaintiffs claimed that they were owners in possession of the property as co-owner of the suit land and therefore sought injunction against the defendants from interfering in their exclusive possession except with due process of law.

The suit was contested by the defendant appellant on the plea that the plaintiffs are not entitled to maintain the suit for injunction as the RSA No. 640 of 2007 (O&M) 2 plaintiffs were not in actual physical possession of the property in dispute which was in possession of the defendants-appellant since 1991. A plea was also raised that the application for correction of revenue entries was moved by the appellant-defendants and the revenue entries stood corrected in favour of the appellant-defendants, the appeal filed by the plaintiff- respondent also failed.

The learned counsel for the appellants contended that the learned appellate Court wrongly rejected the revenue entries merely on the ground that these were corrected during the pendency of the suit by ignoring the fact that application for correction was made prior to filing of suit by plaintiff.

The learned Courts below are right in decreeing the suit as admittedly it was the plaintiff-appellant, who was shown to be in possession of the property. The change of revenue entries during the pendency of the suit could not be read to deny relief to the plaintiff.

The learned Courts also held that the appellant defendants have also failed to show in what capacity they came in possession, by purchase of property from co-sharer. The appellant could at best claim symbolic possession.

The learned courts below on appreciation of evidence have recorded a concurrent finding of fact that the plaintiff being in possession was entitled to protect his possession and could not be dispossessed except with due process of law. The defendant/appellants having purchased the property from co-sharer are entitled to possession by filing a suit for partition RSA No. 640 of 2007 (O&M) 3 and possession.

The learned counsel for the appellants challenges the judgment and decree by raising the following substantial question of law :-

1. Whether the suit for injunction by the plaintiff was competent against the co-sharer ?

The learned counsel for the appellants contends that once by virtue of purchase defendant/appellants stepped into the shoes of the co-sharer i.e. the vendor then their status was that of a co-sharer. The suit for injunction by a co-sharer was not competent. There is no force in the contention. The defendant-appellants failed to prove their co-ownership with plaintiff- respondent as no sale deed was pleaded or proved. If for the sake of arguments defendant/ appellants are taken to be co-sharer by way of purchase, still they can claim possession only by partition, as sale of share by co-sharer can entitle the vendee to symbolic possession.

The substantial question of law as framed does not arise in the present appeal nor any other substantial question of law arises.

No merit.

Dismissed.