

(2015) 08 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 24 of 2004

Painchu Ram and Others

APPELLANT

Vs

Hoshiar Singh and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Citation : (2015) 08 SHI CK 0021

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Sanjeev Kuthiala, for the Appellant; N.K. Thakur and Jagdish Thakur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J—The instant appeal has arisen out of the judgment and decree rendered by the learned first appellate Court on 08.10.2003 in Civil Appeal No. 40 of 2000 whereby the learned first appellate Court affirmed the judgment and decree rendered by the learned trial Court on 26.2.2000 in Case No. 227/94 and consequently dismissed the appeal preferred by the defendants/appellants.

2. The plaintiffs had instituted a suit for permanent injunction against the defendants for restraining the latter from raising any construction and changing the nature of land measuring 553-88 square meters comprised in Khewat No. 111 Min Khatauni No. 335 Min bearing Khasra No. 5101 situated in village Daulatpur Chowk, Tehsil Amb, District Una, H.P. till partition of the suit land held by the parties at lis takes place. The learned trial Court decreed the suit of the plaintiffs. The defendants standing aggrieved by the rendition of the trial Court instituted an appeal before the learned District Judge, Una assailing the findings recorded by the trial Court. The District Judge Una on an appraisal of the material on record concurred with the findings and conclusions recorded by the trial Court. Consequently, he affirmed the judgment and decree rendered by the learned trial Court. The defendants are aggrieved by the renditions of both the

Courts below, hence, have instituted the instant appeal before this Court for reversing the concurrently arrived findings and conclusions of both the Courts below.

3. The facts necessary for rendering a decision on the instant appeal are that the plaintiffs filed a civil suit before the learned trial Court for permanent injunction restraining the defendants from raising any construction and changing the nature of the land measuring 553-88 square meters comprised in Khewat No. 111 min, Khatauni No. 335 min, Khasra No. 5101 as entered in the Khatauni Bandobast for the year 1992-93 situate in village Daulatpur Chowk, Tehsil Amb, District Una, H.P. till partition. The plaintiffs have contended that the suit land is jointly owned and possessed by the parties along with other co-sharers and the same is located adjacent to the PWD road. The suit land is very valuable and partition proceedings with regard to the suit land are pending before Assistant Collector 1st Grade, Amb and the same is at the final stage. The plaintiffs have also been allotted the land out of the suit land during partition by the field staff. It is averred that the defendants have no right to change the nature of the suit land till partition. The defendants are threatening to raise construction so as to nullify the separate Kuras prepared by the settlement field staff for the purpose of partition. Hence, the suit was filed for seeking the relief(s), mentioned above.

4. The suit of the plaintiffs was resisted by the defendants by filing written statement taking preliminary objections regarding lack of maintainability, estoppel and the suit being bad for non-joinder of necessary parties. On merits, it has been contended that the suit land was never in possession of the plaintiffs or their predecessor. In fact, the suit land was in possession of Harnam Singh alias Harnama who inducted Banna father of the defendants as occupancy tenant over the suit land vide registered deed of 16.6.1909. Banna was put in possession and thereafter father of the plaintiffs Lal Singh used to receive rent of the suit land. Banna was occupancy tenant over the suit land and has become owner under the provisions of Punjab Occupancy Tenant Act, 1952. Now the plaintiffs are neither owners nor in possession of the suit land. The answering defendants have their abadi near the suit land which is part of old Khasra Nos. 1357 and 2306. The plaintiffs had filed partition proceedings without ascertaining the true facts. The defendants have denied the averments made in other paras of the plaint.

5. The plaintiffs filed replication to the written statement of the defendants, wherein, they denied the contents of the written statement and re-affirmed and re-asserted the averments made in the plaint.

6. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the plaintiffs are entitled to the relief of injunction, as prayed for? OPP

2. Whether the defendants were earlier in possession of the suit land as occupancy tenants and they have become owners of it, as alleged? OPD

3. Whether the suit is not maintainable? OPD
4. Whether the plaintiffs are estopped by their acts and conduct to file this suit? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Relief.
7. On an appraisal of the evidence, adduced before the learned trial Court, it decreed the suit of the plaintiffs. In appeal, preferred by the appellants/defendants before the learned first Appellate Court, against the judgment and decree of the learned trial Court, the learned first Appellate Court affirmed the findings, recorded by the learned trial Court and consequently, dismissed the appeal preferred by the defendants/appellants.
8. Now the defendants/appellants have instituted the instant Regular Second Appeal before this Court, assailing the findings recorded by both the Courts below. When the appeal came up for admission on 29.04.2005, this Court, admitted the appeal instituted by the defendants/appellants against the judgments and decrees rendered by the Courts below, on, the hereinafter extracted substantial questions of law:-

1. Whether the learned Courts below have misread and mis-appreciated oral and documentary evidence on record, especially the statements of PW-1, DW-1, Ext.P-1, Ext.D-1 to Ext.D-39, Ext.D-41, Ext.D-42 and Ext.D-2 to Ext.D-37?
2. Whether the occupancy tenant inducted by a co-owner on the basis of an agreement and for construction of rent, on the enactment of the Punjab Occupancy Tenant, Vesting of Proprietary Right, 1952 would become owner of the land?
3. Whether a suit for injunction can be brought by a person not in possession on the averments that the said person is a co-owner despite the revenue entries to the contrary as also the pleadings of ouster and complete possession by the other side?

Substantial Questions of Law No. 1 to 3:

9. Since all the aforesaid extracted substantial questions of law are entwined, hence, they being interlinked, necessitate a conjoint/cumulative decision.
10. The suit land is comprised in Khasra No. 5101. For rendering a determination qua whether extantly the suit land to which Khasra No. 5101 is ascribed in Ext.P-1 Jamabandi for the year 1992-93 stands un-partitioned or hence it is an undivided holding, an allusion to Ext.P-1 unravelling the factum of the plaintiffs Hoshier Singh and Sukh Dev along with real brothers Rajinder Singh and Rachhpal Singh therein holding 9 shares out of 18 shares whereas the remaining 9 shares being held as owners by Lekh Raj, Kashmir Singh and Waryam Singh etc. as Bayan i.e. vendors under whom the defendants herein stand recorded as

Mustrian constrains an apt inference that extantly the suit land is held jointly by the parties at lis. Uncontrovertedly, proceedings for partition of the suit land are pending before the Assistant Collector 1st Grade, Amb. Given the pendency of proceedings for partition of the suit land before the Assistant Collector 1st Grade, Amb obviously no conclusion can be formed at this stage that they have hence attained consummation or that the hitherto undivided status of the suit land has begotten severance of its jointness by its being partitioned by metes and bounds. In sequel, with the jointness of the undivided holding comprised in Khasra No. 5101 having remained undismembered by its partition, the plaintiffs/respondents along with other recorded co-owners hold it jointly. Any undivided holding entails application to it of the rule of joint tenancy whereby each of the co-owner in the undivided holding has unity of title and community of possession with the other co-owners. The learned counsel for the defendants/appellants vehemently endeavours to repel the right of the plaintiffs/respondents to seek a decree of permanent injunction restraining the former from carrying out construction on the suit land thereby changing its nature on the score of the defendants/appellants having held exclusive possession of the suit land continuously yet since 1907-08 as apparent from a perusal of the Jamabandi apposite to the years aforesaid. The evolution of exclusive possession of the defendants/appellants of the suit land is embedded upon Ext.D-1 with a candid communication therein of the original co-owner therein one Harnam Singh @ Harnama having created tenancy rights qua his share in the undivided holding in favour of Banna, the predecessor-in-interest of the defendants. The entry of Banna, the predecessor-in-interest of the defendants/appellants, as a tenant qua the share of original co-owner Harnam Singh @ Harnama in the undivided holding as occurring in Jamabandi for the year 1907-08 stands constantly besides consistently reflected in the subsequent Jamabandis for the years 1916-17 Ext.D-40, for the year 1956-57 Ext.D-41 and for the year 1977-78 Ext.D-42. However, in Ext.D-43 Jamabandi for the year 1990-91, the successors-in-interest of Banna who are the defendants/appellants stand reflected therein as Mustrian qua the suit land. The factum of the predecessor-in-interest of defendants/appellants one Banna holding the share of Harnam Singh @ Harnama in the undivided holding as a tenant gains succor from Ext.D-39 which is the Misal Haquiat for the year 1913-14. The documentary evidence as alluded to herein-above amplifyingly pronounces the fact that since 1907-08 in pursuance to Ext.D-1, the predecessor-in-interest of the defendants/appellants Banna had continuously thereafter held the share of Harnam Singh @ Harnama in the undivided holding as a tenant besides the documentary evidence conveys the exclusivity of possession of the suit land by Banna during his life time and such exclusivity of possession of the suit land on his demise continuing with the defendants/appellants. On the strength of the aforesaid manner of exclusivity of possession of the appellants/defendants of the suit land comprised in Khasra No. 5101, the learned counsel for the defendants/appellants foists an argument that hence the suit for permanent injunction for whose attaining success proven possession of the suit land by the plaintiffs/respondents was both imperative as well as a sine qua non,

whereas when the plaintiffs/respondents continuously since 1907-08 through their predecessor-in-interest never held its possession or on the letters demise do not either hold or enjoy its possession contrarily when the defendants/appellants rather held in the manner aforesaid besides now hold its exclusive possession while constituting non emanation of proof of the aforesaid indispensable tenets, was dismissable. In aftermath, the learned counsel for the defendants/appellants concerts before this Court that the according of a decree of permanent injunction in favour of the plaintiffs/respondents is interferable by this Court. Even though the documentary evidence on record bears out the submission addressed before this Court by the learned counsel for the appellants/defendants especially when no cogent evidence of probative worth has been adduced by the plaintiffs/respondents to dislodge the presumption of truth carried by the revenue entries constituted in the afore-referred exhibits displaying the exclusivity of possession of the suit land of the predecessor-in-interest of the defendants/appellants and on his demise of the defendants/appellants thereon, nonetheless the mere exclusivity of possession of the predecessor-in-interest of the defendants/appellants of the suit land and on his demise of the defendants/appellants thereon, cannot tantamount to sequestering an inference from this Court that the rule of joint tenancy embodying the canon of unity of title and community of possession inhering in each of the co-owners in the joint land/undivided holding, stands usurpation. Apparently also the documentary evidence alluded to herein-above portrays that only the share of one of the co-sharers in the undivided holding inasmuch as of Harnam Singh @ Harnama, was encumbered with the tenancy of the predecessor-in-interest of the defendants/appellants, which encumbrance of the share of Harnam Singh @ Harnama in the undivided holding with the tenancy of the predecessor-in-interest of the defendants/appellants stands now continued in favour of the defendants/appellants. Concomitantly, the share of the predecessor-in-interest of the plaintiffs/respondents and on his demise their share in the undivided holding cannot be foisted with the encumbrance of tenancy of Banna, the predecessor-in-interest of the defendants/appellants besides such encumbrance on his demise subsisting in the defendants/appellants, especially when (a) Ext.D-1 does not portray the factum of the predecessor-in-interest of the plaintiffs/respondents having permitted his share in the undivided holding with Harnam Singh @ Harnama to be subjected to creation of tenancy rights therein in favour of the predecessor-in-interest of the defendants/appellants (b) the imminent reflection in the documentary evidence alluded to herein-above of the plaintiffs/respondents holding the suit land jointly along with other recorded co-owners under whom the defendants/appellants hold the suit land as Mustrian which reflections therein while enjoying a presumption of truth attain finality and conclusiveness especially when the presumption aforesaid imputed to them stand undisplaced for want of adduction of cogent evidence by the defendants/appellants. As a corollary begetting an inference that the plaintiffs/respondents hold the suit land jointly along with other recorded co-owners under whom the defendants/appellants hold the suit land as Mustrian. In aftermath, with

conclusiveness being imputed even qua the reflections in the apposite record qua the suit land, of the plaintiffs/respondents holding the undivided suit land jointly along with other recorded co-owners under whom the defendants/appellants hold it as Mustrian, naturally then, the application of the rule of joint tenancy with its fullest vigour to the undivided holding is the ensuing effect thereof. Hence the exclusivity of possession of the suit land by the defendants/appellants through their predecessor-in-interest Banna since 1907-08 and on his demise such exclusivity of its possession subsisting in them has to give way to the application besides invocation of the rule of joint tenancy qua an undivided holding as the suit land is, besides the concomitant underlying tenet thereof of each of the co-owners in the undivided holding enjoying unity of title and community of possession with the other co-owners warrants its too holding sway even if a part of the undivided holding is held in exclusive possession by one or more of the recorded co-owners or by the Mushtrian under them as the defendants/appellants are. Even though the said rule of joint tenancy applicable to an undivided holding may appear to fade and stand eclipsed by the factum of the predecessor-in-interest of the defendants/appellants holding uninterrupted exclusivity of possession of the suit land and on his demise the latter extantly holding it, yet permitting such waning or eclipsing of the rule of joint tenancy applicable to an undivided holding as the suit land is, would have the effect of extinguishing the rights of the plaintiffs/respondents as co-owners in the undivided holding, besides would give latitude to co-owners/Mushtrian as the defendants/appellants are while theirs holding exclusive possession of any part of the undivided holding to use it in a manner inconsistent with the compatible rights of other co-owners therein. In holding that when the rule of joint tenancy stands applicable to an undivided holding as is the suit land and with its embodying the salient canon of unity of title and community of possession inhering in the recorded co-owners qua the suit land, as a corollary the holding of exclusive possession of the suit land by the defendants/appellants in the manner aforesaid is to be construed to be constructive possession for all recorded owners. Concomitantly negating the assertion by the defendants/appellants to appropriate any part of the joint holding to their exclusive user when its jointness yet remains unsevered. Ensuingly, when the defendants/appellants proceed to, even when the jointness of the undivided holding remains undismembered by its having been partitioned by metes and bounds whereupon the suit land comprised in Khasra No. 5101 stands allotted to those co-owners under whom the defendants/appellants are Mushtrian, in the garb of mere exclusivity of its possession by them especially when such possession for reasons aforesaid is possession held by them constructively for the plaintiffs/respondents along with other recorded co-owners, use without the consent of the plaintiffs/respondents, a valuable and coveted portion thereof for raising construction in derogation of besides in inconsistency with the compatible rights of the plaintiffs/respondents therein. Any countenancing by this Court of the above concert of the defendants/appellants obviously would cause a jolt to the principle of joint tenancy applicable to an undivided holding. Moreover, the aforesaid manner of

exclusivity of possession of the suit land by the appellants/defendants cannot per se connote evidence of complete ouster of the plaintiffs/respondents from the suit land, moreso, when no evidence of vigour and potency has been adduced that in the defendants/appellants holding exclusive possession of the suit land in the manner aforesaid had intended to while carrying an animus possidendi usurp the right of the plaintiffs/respondents in the suit land by hence completely ousting them.

11. Even though the defendants/appellants on the score of their predecessor-in-interest having purportedly held the suit land as an occupancy tenant since 1907-08, as such, with the Punjab Occupancy Tenant, Vesting of Proprietary Right, 1952 contemplating conferment of proprietary rights on an occupancy tenant, in sequel with the aforesaid having then acquired by statutory operation proprietary rights qua the suit land is contended to estop the plaintiffs-respondents to claim any rights as co-owners qua the suit land. However, the said submission does not carry much force in the face of DW-1 having in his testimony disclosed that their predecessor-in-interest has purchased the suit land from Harnama. Consequently, when oral evidence on record constituted in the testimony of DW-1 is in conflict, with the propagation of the defendants besides with the espousal of the defendants/appellants of their predecessor in interest while his being an occupancy tenant qua the suit land his having under the Punjab Occupancy Tenant Vesting of Proprietary Right, 1952 contemplating statutory vestment of proprietary rights in an occupancy tenant acquired title thereon, hence renders the said submission to capsize nor renders dispensable the enjoined necessity of the undivided holding being dismembered of its jointness by its partition.

12. The view as taken by both the Courts below is reasonable and based on a proper appreciation of material on record and does not suffer from any perversity or absurdity nor also warrants any interference by this Court. Substantial questions of law accordingly answered.

13. The result of the above discussion is that the appeal, preferred by the defendants/appellants, is dismissed and the judgments and decrees, rendered by the learned Courts below, are affirmed and maintained. However, the parties are left to bear their own costs. All pending application(s) shall also stand dismissed. Records be sent back forthwith.