

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5905 OF 2008
[Arising out of SLP(C) No. 3749/2008]

BALWANT SINGH AND ANR.

... APPELLANT(S)

:VERSUS:

TEJ SINGH AND ORS.

... RESPONDENT(S)

ORDER

Leave granted.

Plaintiffs in a suit for grant of a decree for permanent injunction restraining the respondents herein from interfering with the ownership and possession of the land in the suit, are before us herein.

The said suit was decreed. The First Appellate Court, however, reversed the said judgment and decree opining that

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the defendants-respondents had proved their title to the suit lands, holding:

“It is settled principle that one co-khatedar cannot get injunction against other co-khatedar till the time it is not proved that partition of their shares has taken place and they occupy their respective shares on the basis of any Exchange Deed. Admittedly appellants/defendants No.1 & 2 and plaintiffs/respondents No.1 & 2 are joint Khatedars on the basis of the copy of the Khatoni available on record. No any such document is available on record which can reflect that plaintiff/ respondents No. 1 & 2 are in possession on land, in question. The document No. 11C, copy of the Khatoni of 1407 Fasli which is available on record, from the perusal of same it does nowhere becomes evident that the said entry of names has been made on the land area 1 Nali 3 Mutthi of land No. 1662. Admittedly, each Khatedar of joint Khata has got the right to use land of his respective share and restraining him by any injunction would not be held justified & reasonable. No any such documentary evidence has been produced on record that in Khata No. 33 or the land exists in Land No. 1662 as to where the land of plaintiffs/ respondents No. 1 & 2 is situated.”

Aggrieved by and dissatisfied with the order of the First Appellate Court the appellants preferred a second appeal before the High Court.

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The High Court formulated the following substantial questions of law:

“1. Whether learned appellate court has wrongly and in his

judgment and decree that learned trial court assumed the title and possession of appellants only on the basis of oral evidence when the respondents never objected the construction of house and possession of appellants in disputed land?”

2. Whether the respondents No. 1 and 2 in spite of enjoying their entire land of their share can interfere in the land of appellants by saying that they are co-sharer of the land in dispute?

3. Whether the basis of defence put by the respondents that they are owner in possession of the disputed land by exchange deed is sustainable in the light of section 118 of Transfer of Property Act or 161 of U.P.Z.A. Act?

By reason of the impugned judgment, stating that the findings of the First Appellate Court were findings on fact, the High Court opined that no substantial question of law

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arose for its consideration. On the said finding, the second appeal has been dismissed.

Mr. Rawat, learned counsel appearing on behalf of the appellants would submit that the First Appellate Court as also the High Court failed to notice that the

defendants-respondents had stated in their evidence that their land is about 70 meters away from the land of the appellants and they were not aware of the exact location of the land.

Both the Courts below, however, proceeded on the basis that the plaintiffs failed to prove their respective claims over the land in suit, by reason of deeds of sale purported to have been executed in their favour by others. It is also not correct to contend that the identity of the suit land itself was in question.

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We are, therefore, of the opinion that the High Court has rightly arrived at a finding that no substantial question of law arose for its consideration. The appeal, is therefore, dismissed.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

**NEW DELHI,
SEPTEMBER 29, 2008.**