

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.7928 of 2013

Date of decision:03.03.2015

Ram Kumar son of Sadhu, resident of Village Rajound, Tehsil Rajound, District Kaithal.

... Petitioner

versus

Naresh Kumar son of Shri Megh Pal son of Shri Rattan Singh, resident of Village Rajound, Tehsil Rajound, District Kaithal, and another.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Sourav Garg, Advocate,
for the petitioner.

Ms. Sonia G. Singh, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petitioner is a plaintiff who sought for injunction against the defendant who was a purchaser from an admitted co-owner. The trial court had granted a relief of injunction even while holding that the defendant as a purchaser from a co-owner is entitled to put it to agricultural use. The plaintiff was aggrieved by even those observations relying on the fact that the defendant-vendor although a co-owner, his name was not entered in the revenue

records and a purchaser from a co-owner can only sue for partition and cannot take possession of any of the properties. The plaintiff had also sought for injunction in the appellate court. In the appellate court, the appeal was dismissed and the court also held that the defendant cannot be prevented from putting up any construction.

2. A purchaser from co-owner will always step into shoes of alienating co-owner and entitled to the same rights of joint possession as the vendor had. If any attempt to alter status quo is made, such as altering the character of property and yet another co-owner objects to such alteration, without predicating the property to a particular extent by working out a remedy for partition, a purchaser/co-owner cannot put the property to any use that would exclude the other co-owner and if, in this case, the plaintiff was objecting in his appeal to the trial court's observations that the defendant shall have the benefit of the agricultural use in the manner that the trial court had observed, the plaintiff/appellant's plea could have been easily rejected on the same reason which the trial court had given. The appellate court could not have gone to the next stage of saying of what even the trial court did not say and what was not even brought as a point of appeal by the purchaser that construction could also be made. Such an observation is out of sync with law and against even the procedure which could have been adopted in appeal filed by the plaintiff, when the respondent had not filed the appeal. It

is not merely an adverse observation which could have been assailed without preferring the appeal. On the other hand, it was a particular relief which the trial court had granted and if it had not been appealed against by the respondent, a modification could not have been done by the appellate court in the manner that it did. I restore the order of the trial court and modify the appellate court's order to the extent that it allows the respondents to put up any construction. The relief of injunction sought for by the petitioner against putting up any further construction is granted in favour of the petitioner.

3. The revision petition is allowed to the above extent.

(K.KANNAN)
JUDGE

03.03.2015
sanjeev