

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

RSA No.4920 of 2009 (O&M)

Date of Decision: 09.03.2015

Ajaib Singh

...Appellant

Versus

Harnek Singh & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Sonia G. Singh, Advocate,
for the appellant.

Mr. Rajan Bansal, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Having regard to the findings recorded by the Lower Appellate Court in para. 17 of the judgment in appeal dated November 11, 2009, no question of law, much less substantial arises for consideration of this Court. The plaintiff instituted a suit against part sale of joint property by a co-sharer by pleading that specific khasra numbers were sold which was not legally permissible. If that were true, the contention would have prevailed to the extent that such sale would be read as one without khasra numbers and valid with respect to share but would not cease to be a valid sale document. However, to the contrary, the Court below read the recitals in the sale deed (Exb.P-3) and found that it does not transfer specific khasra number and was neither beyond the share of the defendants who sold the property to third parties who further sold it onward. The purchasers thus stepped into the shoes of the vendor-defendants, co-sharers of joint property with the

plaintiff. It is always open to a co-sharer to sell his share in the joint property and law does not restrict or prohibit such sales. The Court below in first appeal has balanced out the interests of both the parties by making the sale deed subject to adjustment of the land at the time of partition determining rights of the respective parties to specific khasra numbers by a suitable mode of partition, whenever partition proceedings are brought for adjudication, if it is not possible to divide the property by consent. The judgment of the lower appellate Court is well reasoned and is not open to interference on facts and the following questions of law formulated in the memorandum of appeal do not arise in view of the finding of fact recorded that the sale is not beyond the share of the vendor as a co-sharer:-

- “1. Whether the plaintiff can claim injunction to the extent that the other co-sharer be restrained to sell the land more than his share?
2. Whether the plaintiff is entitled to claim permanent injunction to the extent that the respondents should not sell the property without partition giving specific Khasra Number?
3. Whether the respondents can sell the property which is in possession of the appellant?
4. Whether the grave manifest in justice has been caused to the appellant?”

When no specific khasra number has been sold then possession would be understood as joint possession of all co-sharers which itself will be subject to the partition proceedings. Besides, PW-2 in cross-examination

admitted that the defendants did not sell suit property beyond their shares. More interestingly in cross-examination, it stands admitted by PW-2 that the subject matter dispute had been settled by way of compromise through the good offices of the village Panchayat and yet the plaintiff filed the suit. These facts are found recorded by the trial Court in its judgment which is not rebutted. Therefore, no question of law, much less a substantial one, arises in this appeal, or any one of those proposed by the appellant in the memorandum; and the appeal is, consequently, ordered to be dismissed and sent to the record room.

9.3.2015
monika

(RAJIV NARAIN RAINA)
JUDGE