

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

ESA No.4 of 2015 (O&M)
Date of Decision: 27.01.2015

Jodhbir Singh

. . . .Appellant

Versus

R.S. Puri and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Harkesh Manuja, Advocate,
for the appellant.

RAKESH KUMAR JAIN, J. (ORAL)

The objection filed by the appellant to the sale being effected on the basis of a decree for specific performance has been dismissed by both the Court below.

Learned counsel for the appellant has submitted that the property is ancestral in nature as it would have devolved upon him being a coparcener and has thus objected to the sale having been effected by his father Jaspal Singh.

Learned counsel for the appellant has fairly submitted that when the objections were filed at that time the sale was not effected, therefore, he has no right by that time but during the pendency of the objection, the sale deed was executed which has been challenged by him on the ground that the ancestral property could have been sold by karta of the family only for legal necessity. The question as to whether the property in dispute is ancestral or the karta has the legal necessity to dispose of such property is the

question of fact which can only be determined in the pending suit, therefore, no relief can be granted to the appellant in the present appeal.

At this stage, learned counsel for the appellant has submitted that since his objection has been dismissed, it would operate as *re judicata*. It is needless to mention that the only remedy lies with the appellant is to file a suit, after the sale deed is executed and not before that. Since, he has already filed the civil suit, therefore, any finding while disposing of this petition would not operate as *re judicata*.

In view of the above, present appeal is hereby disposed of.

27.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE