

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

I.

Regular Second Appeal No.154 of 2011 (O&M)

Date of decision: 10.4.2015

Jasbir Singh and others

... Appellants

Versus

Satbir Singh and others

... Respondents

II.

Regular Second Appeal No.159 of 2011 (O&M)

Jasbir Singh and others

... Appellants

Versus

Satbir Singh and others

... Respondents

III.

Regular Second Appeal No.24 of 2012 (O&M)

Dalbir Singh

... Appellant

Versus

Tarlochan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Aseem Kalia, Advocate for
Mr.Premjit Kalia, Advocate
for the appellants.

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

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of three RSAs No.154 of 2011, 159 of 2011 and 24 of 2012 as common questions of law and facts are involved in all the three appeals and can be decided by a common judgment. The facts are taken from RSA No.154 of 2011.

2. The sale of part share in joint land by a brother of the plaintiffs-appellants with specific khasra numbers has to be read as sale of the share of the brother and the khasra numbers are ignorable till such time the partition proceedings take place and the joint land is divided by metes and bounds among the co-sharers.

3. I find no palpable error in reasoning committed or the conclusion arrived at by the lower appellate Court in reversing the judgment and decree of the learned trial Court holding in first appeal that an injunction would not lie against a co-owner in a situation of the present kind presented in the suits. Besides, the learned lower appellate court has noticed that there is no averment in the plaint that the present appellants were in exclusive settled possession of a particular part of the joint land which is nonetheless agricultural in nature in order to invite consideration of the court for issuance of an injunction in favour of the plaintiffs. It may be

noted that the defendants are non-family members who have stepped into the shoes of the selling co-sharer of joint land by a sale deed to the extent of the vendor's share.

4. However, the request of the learned counsel for the anxious appellants appears not to be ingenuine or lacking in bona fides inasmuch as force and overt or covert acts should not be used by anyone to upset joint possession by the friction of selling brother's act of incorporating specific khasra numbers in the sale deed executed by him in favour of third parties. Therefore, it is ordered that till such time as partition proceedings are not finalised between the shareholders, the joint possession of the co-sharers will remain in status quo from the date of institution of the first suit in order to avoid breach of peace and to maintain inter se harmony in the interregnum.

5. In view of the above, no question of law, much less substantial arise in these appeals warranting admission of the matters since injunction normally would not issue against a co-sharer as is the settled position in law and with this case not falling in the exceptions carved out by long settled possession with a view to maintain the equilibrium till division of property takes place defining individual portions of corpus by a decree of partition. The usufruct of corpus will evidently remain proportionate to the respective shares in the joint property and each one accountable to the produce by dint of tilling of the land and in the manner shared between themselves. The exception is in **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass**, AIR 2005 SC 104, where the Supreme Court held that “unless and until a case of irreparable loss or damage is made out by a party to the suit,

the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.” Further, the Supreme Court did not think the High Court was justified “in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done”.

6. I do not think the passing of this order will cause any prejudice to the respondents if they were not heard, the legal position being settled and their rights to vendor's share duly protected but sans specific khasra numbers to which they could have no pre-existing rights. Yet they would have right to apply in these disposed of appeals if they still feel aggrieved by anything said in this order.

7. For the above reasons, all the three appeals fail and are dismissed, save and limited to the temporary status quo as ordered.

8. A copy of this order be sent to the respondents and to the learned trial court for information.

(RAJIV NARAIN RAINA)
JUDGE

April 10, 2015
Paritosh Kumar