

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

R.S.A. No.4455 of 2011 (O&M)

Date of decision: 29.4.2015

Harnek Singh and others

... Appellants

Versus

Jangir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.B.S.Bhalla, Advocate
for the appellants.

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

RAJIV NARAIN RAINA, J. (Oral)

This is a defendant's second appeal against the appellate decree passed by the learned Additional District Judge, Moga on 12.11.2010. The plaintiff brought a suit for separate possession as owners according to their shares by way of partition respect to 3 passes of the land described in the headnote to the plaint. The appellant came upon the land through a sale deed dated 30.12.1992 Ex.D2 out of Khasra No.616 and similarly, shares in two other properties belonging to the common pool of joint khewat in Khewat No.361 bearing area 0M 7 sarsahies (4/96th share) and 3M-7 sarsahies in Khewat No.356 and 361. On the date when the sale deed was executed , partition had not taken place among the co-sharers and, therefore, any reference to khasra number in the sale deeds would have read down as a

sale to the extent of share parted away by the vendor/s. The suit of the plaintiff was decreed and the appellate Court has modified the order with sufficient justification given in para.11 of the judgment. The findings recorded in para. 11 of the judgment read : -

“11. After hearing the respective contentions of both the sides and having gone through the oral as well as documentary evidence available on the file, it is found that the judgment and decree rendered by the Court of first instance needs some modification so far as the shares of the parties are concerned. Concededly, appellants purchased 15 marlas of land vide sale deed dated 30.12.1992 Ex. D2 out of khasra No.616 but it is found that the vendors of the appellants/defendants no.1 to 3 were not the exclusive owners of khasra No.616. It is well settled proposition of law that sale of specific khasra numbers of specific area out of the joint property will be considered as sale of share further from the perusal of para no 14 of the judgment of the learned trial Court it, transpires that share of the different co-sharers has been described. It has been fairly concededly by learned counsel for the contesting respondents that the appellants can be compensated from the other joint property in which the vendors of the appellants were co-owners. Therefore, the judgment of the Court of the first instance is modified to the extent that in khewat no.356, the area allotted to Resham Singh, Baldev Singh, Baldev Singh and Sohan Singh measuring 3 marlas is given to the appellants/defendants no.1 to 3. Similarly, in khewat no.361, the areas measuring 0 marla 7 sarsahies which is 4/96 share has wrongly been given to the respondents no.21 to 24 rather it should have been given to the appellants/defendants no 1 to 3 and accordingly, the same is hereby given to the appellants/respondents no.1 to 3. Consequently, the appellants/ defendants no.1 to 3 are co-owners in khewat no.356 and 361 to the extent of 3 marlas 7 sarsahies. Consequently, the instant appeal is modified and the appeal is partly accepted as numerated above.

Decree sheet be prepared accordingly. Trial Court file along with copy of this judgment be sent back. Appeal file be consigned to the record room.”

I have no reason to differ with what the learned Additional District Judge, Moga has dispensed with or to tinker with the findings recorded by the Courts below as modified by the appellate decree. The case is dependent purely on facts and the findings arrived at on evidence adduced by both the parties and there appears to be no question much less a substantial one arises in this appeal to merit admission of this case.

Consequently, this appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

April 29, 2015
Paritosh Kumar