

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

RSA No.2102 of 2012 (O&M)

Date of decision : 02.11.2015

Satpal and ors.

...Appellants

Versus

Resham and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.K. Tripathi, Advocate for appellants.

Ms. Alka Sarin, Advocate for respondent Nos.1 to 5.

AMIT RAWAL, J. (Oral)

The appellants-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby suit filed by the respondents-plaintiffs for permanent injunction has been decreed, in essence, judgment and decree of the trial Court, has been reversed.

Mr. S.K. Tripathi, learned counsel appearing on behalf of appellants submits, that the appellants-defendants acquired the ownership of the property vide sale deed dated 22.03.1979 and the suit for permanent

injunction was filed in the year 2001, seeking restraint not to interfere and forcibly dispossessed on the premise that plaintiffs alongwith Chet Ram were co-sharers and the Chet Ram had erroneously sold more share than what he had. He further submits that once the plaintiff was aware of this fact, can only sought injunction. The respondents-plaintiffs able to seek a partition by challenging the sale deed and not simplicitor injunction and thus prays that following substantial question of law arises:-

- 1) Whether simplicitor suit for injunction against the co-sharers, not found to be in exclusive possession would be maintainable.
- 2) Whether simplicitor suit for permanent injunction in the absence of declaration seeking setting aside the sale deed dated 22.03.1979 is tenable.

Ms. Alka Sarin, learned counsel appearing on behalf of respondent Nos.1 to 5-plaintiffs submits that Lower Appellate Court being the last Court of fact and law, found that appellants-defendants were not in possession by virtue of the sale deed and further found that Chet Ram had 1/4th share in the property i.e. 139 square yards and out of which he has already raised a construction over a land measuring 124 square yard and the surplus area left with him was 15 square yards, whereas as per the sale deed, he had sold 323 square yards. The total holding of the co-sharers was 558 square yards and thus there is no illegality and perversity, much less, no substantial question of law arises for determination.

I have heard learned counsel for parties and appraised the paper book.

Keeping in view the aforementioned contention of the parties to

the lis, in my view best remedy available to them was to seek declaration of the sale deed and as well as partition of the property. In the absence of the declaration, lower Appellate Court could not have ventured to decide whether the sale deed was beyond the share or not.

In my view, the lower Appellate Court exceeded its jurisdiction in setting aside the sale deed without there being any challenge.

There is another aspect of the matter, no documentary evidence has come on record to show that either of the parties are in exclusive possession of the respective shares, thus in view of law laid down by the Full Bench of this Court in *Bhartu Vs. Ram Sarup*, 1981 PLJ 204 and DB Bench of this Court in *Bachan Singh Vs. Swaran Singh*, 2000(3) RCR (Civil) 70, no injunction suit is maintainable against the co-sharers and remedy lies elsewhere.

In view of what has been noticed above, judgment and decree of the Lower Appellate Court is not sustainable and is hereby set aside.

The substantial questions of law as noticed above are also answered in favour of appellants-defendants and against the respondents-plaintiffs.

Parties shall be bound to seek partition of the property in the competent Court of law.

Appeal is accordingly allowed.

02.11.2015

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**(AMIT RAWAL)
JUDGE**