

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103/A

RSA No. 5305 of 2012 (O&M)

Date of decision: 03.11.2015

Kuldeep Bhargava

....APPELLANT

VERSUS

Ram Nath Bhargava and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. C.B.Goel, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional District Judge, Gurgaon dated 15.09.2012, by which the appeal of the respondents-defendant challenging the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon dated 17.03.2011 allowing the suit has been set aside and the suit of the appellant-plaintiff dismissed.

2. Notice of motion.

Mr. Amit Jain, Advocate, accepts notice on behalf of the respondents.

3. It is the contention of the learned counsel for the appellant that although the plea with regard to the appellant-plaintiff being the tenant has

not been found to be correct nor can it be accepted in the light of the dismissal of RSA No. 4844 of 2012 today, however, he contends that the possession of the appellant-plaintiff over the land in question is apparent from the Jamabandi for the year 2004-05 Ex. D1 and the subsequent Jamabandis produced by the respondents-defendants, which shows the possession to be of the appellant-plaintiff. He contends that the injunction may not be granted to the appellant-plaintiff in the light of the Full Bench judgment of this Court in **Bhartu vs. Ram Saroop**, 1981 PLJ 204, as he has been found to be a co-sharer but since the possession is with him as per the Jamabandis produced by the respondents, the right to take possession would be available to the parties through partition.

4. Counsel for the respondents asserts that no injunction can be granted to the appellant-plaintiff but he could not controvert the right with regard to the initiation of the partition proceedings by any of the co-sharers. It is not disputed by him that as per the revenue records, the appellant-plaintiff has been shown to be in possession as co-sharer.

5. In view of the above, the judgments passed by the Lower Appellate Court is affirmed to the extent that no injunction can be granted to the appellant-plaintiff. However, the parties will be entitled to take recourse to partition of the land. The possession, as it exists today shall enure till the partition of the land in question.

6. The appeal stands disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 03, 2015
pj