

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3054 of 2015 (O&M)

Date of Decision: 28.07.2015

Satya Bhushan

..... Appellant

Versus

Mahavir Parshad and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Karan Bhardwaj, Advocate,
for the appellant.

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

RAJIV NARAIN RAINA, J.

The plaintiff is in second appeal having lost in both the courts below. The suit was for declaration to the effect that the defendant, a co-sharer, had sold a specific portion of the property to third parties who are also the arrayed defendants. It is not disputed that partition of property has not taken place among the co-sharers. It is also not disputed that the land is not agricultural and is in abadi where buildings exist in the suit land where the private residences of the co-sharers lie. A categorical finding has been returned by the courts below that parties to the dispute have been in long settled possession of their respective parts and portions of the joint property.

Therefore, if one of such persons sells his share in the property to third parties, which he has a right to, then to the extent of his share, the sale cannot be faulted. In case, khasra numbers are mentioned in the sale deed they would be read down to mean share without specific reference to any

specific khasra number or any inch of the land and competing and conflicting claims would remain open to partition proceedings and division of property.

On these premises, the suit for declaration with consequential relief of permanent injunction has failed. The lower courts have refused to issue declaration or grant injunction to the plaintiff complaining that his co-sharer has sold specific part of the property. So long as the plaintiff was himself in settled possession of any part of suit property, then it does not lie in his mouth to complain.

In the circumstances, parties ultimately will be governed by partition, if and when it takes place.

No ground is made out to interfere in second appeal against the concurrent findings of fact recorded by both the courts below which require scant re-examination by this court in second appeal.

No question of law, much less a substantial one arises for consideration.

The appeal being without merit is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

28.07.2015
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