

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

C.M. NO.5116 C OF 2014 &

R.S.A. NO.2103 OF 2014

DATE OF DECISION: NOVEMBER 16, 2015

Shiv Singh

.....Appellant

VERSUS

Bhupinder Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Vipin Mahajan, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgement and decree passed by the Civil Judge (Junior Division), Pathankot, dated 17.08.2010, whereby the suit of appellant-plaintiff Shiv Singh and that of plaintiff No.2, Bhagwant Singh (proforma respondent No.6) stands dismissed. Even an appeal filed against the said judgement and decree has been dismissed by the District Judge, Pathankot, on 10.12.2013.

It is the contention of learned counsel for the appellant that he would not dispute the findings of the Courts below with regard to the sale deed dated 24.04.1998, Ex.D2 and, therefore, the dismissal of suit qua said sale deed, in the light of observations of the lower Appellate Court, are acceptable. However, the claim of the appellant-plaintiff with regard to joint

ownership in possession of the said land, which is the subject matter of the sale deed, could not have been dismissed in the light of the observations recorded therein. In support of this contention, he has referred to Paras 14 and 15 of the judgement of the District Judge, Pathankot, dated 10.12.2013. He accordingly contends that the present appeal deserves to be allowed.

I have considered the submissions made by learned counsel for the appellant and have gone through the impugned judgements, especially paras 14 and 15 of the judgement passed by learned District Judge, Pathankot.

For the sake of brevity, Paras 14 and 15 are reproduced as under:-

“14. After hearing counsel for the parties and also going through the record and above said proposition of law, I have arrived at a conclusion that learned Trial Court rightly dismissed the suit of the plaintiffs because as per jamabandi Ex.D6 the plaintiffs and defendants no.1 to 4 are recorded co-sharers in joint possession of land of different khewats, khatouni and khasra number of the land in dispute and as per jamabandi Ex.D6, defendant No.4 is recorded as co-sharer in joint possession along with the plaintiffs to the extent of more than 11 ½ marlas of land which she has sold to defendant No.5 vide sale deed Ex.D2 of a particular khewat. So in view of the findings of Full Bench of the Hon'ble High Court in Ram Chander case (supra) sale of such specific khewat, which is within the share of defendant No.4, cannot be said to be illegal because such sale is to be considered as sale of share in the

entire joint land of the co-sharers and it is always subject to partition. It is proved that partition proceedings are also pending between the co-sharers. Hence such sale deed executed by defendant No.4 in favour of defendant No.5 of specific portion, but within her share in the entire joint land of the parties, cannot set aside because the effect of such sale deed executed by defendant No.4 in favour of defendant No.5 will not deprive the plaintiffs of their right to claim their share in the entire joint land of the parties at the time of partition. So learned Trial Court rightly dismissed the suit of the plaintiffs for declaring the sale deed as null and void and mutation sanctioned in favour of defendant No.5 on its basis.

15. Once the parties are proved to be co-sharers in the land in dispute each of them has right to use it in husband like manner and thus the plaintiffs cannot seek relief of injunction restraining the defendants from using the same. So relief of injunction was also rightly declined by the learned Trial Court. Hence finding no merit in this appeal, it is dismissed with costs. Decree sheet be drawn. Trial court file alongwith copy of this judgement be sent back. Appeal file be consigned to the record room.”

In the light of the observations made by the learned lower Appellate Court and keeping in view the submissions of learned counsel for the appellant, the present appeal does not call for any interference by this Court as it is apparent that the Court has returned a finding that the effect of the sale deed executed by defendant No.4 in favour of defendant No.5 will

not deprive the appellant-plaintiff of his right to claim his share in the entire joint land of the parties at the time of partition. Thus, the apprehension of learned counsel for the appellant is misplaced.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same. No substantial question of law is involved in the present appeal.

With the above observations, the appeal stands disposed of.

Since the main appeal stands disposed of, C.M. No.5116 C of 2014 for issuance of interim injunction is dismissed.

November 16, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE