

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3128 of 2014 (O&M)

Date of Decision.21.09.2015

Prem Chand

.....Appellant

Versus

Gurdev Chand and others

.....Respondents

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The suit for injunction was filed by a co-owner claiming that he was entitled to 1/4th share and the defendant was entitled to 3/4th share and he was putting up construction without his concurrence. If the joint possession was being in some way jeopardized by convenient enjoyment of parties and the defendant was attempting to put up construction to modify the status quo as it existed, the appropriate relief must have been only to file suit for partition to predicate to himself a 1/4th share of what he was entitled to. I asked the counsel whether the construction put up by the defendant to qualify any construction more than his 3/4th share. The counsel is not able to explain. If the plaintiff cannot have a clear case made that the defendant has put up construction in excess of his share, the appropriate remedy would have been only to file a suit for partition and not to seek for injunction against a co-owner and seek for mandatory

injunction also. The relief which is refused to the plaintiff by the Appellate Court is perfectly justified and the second appeal is dismissed leaving it to the plaintiff to apply for suit for partition and if there is any portion of the property which is in excess of the defendant's share or includes any portion of 1/4th share which the plaintiff was entitled to, the plaintiff will have appropriate remedy for even demolishing and the fact of suit for mandatory injunction being dismissed will not come against him.

2. The second appeal is dismissed but with the above observations.

(K. KANNAN)
JUDGE

September 21, 2015
Pankaj*