

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

Regular Second Appeal No.3437 of 2014 (O&M)

Date of decision: **08**.09.2015

Gobind Ram

... Appellant

versus

Sunita Rani and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Ajay Kamboj, Advocate,
for Mr. Paramjit Singh Jammu, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The appeal is at the instance of the plaintiff whose suit for declaration of joint possession and injunction against the defendants was dismissed. This second appeal has been filed on 04.10.2013 and there have been recurrent pleas for adjournment ever since its institution. On 27.08.2015 also there was a prayer for adjournment. I've declined the same and proceeded to examine the records on the basis of the fundamental principle that it is the duty of the High Court to examine whether there is any substantial question of law involved in the case for its admission.

2. The suit is filed on the basis of the claim by the plaintiff that his predecessor Jagmohan had purchased 60/110 shares in the total holding of 5 Kanals 10 Marla accounting for 3 kanals of land. Jagmohan was the grandfather of the appellant. The sale admittedly did not make reference to any specific portion denoted by definite boundaries. The defendant had laid claim by virtue of purchase of specific items of property and made reference to the Jamabandi for the year 2007-2008 that recited Jagmohan as co-sharer with the defendants. The purchase by the 1st defendant showed existence of the land which was purchased as adjoining Chauthala Road in Mandi Dabwali. The other sale deeds made reference to transactions of purchases in the vicinity of Saraswati Vidhya Mandir at Mandi Dabwali.

3. The trial court observed that it was not possible to maintain the suit for injunction on the basis of joint holding if the plaintiff's document made reference to an undivided share while the defendant's document contained reference to specific items of property. Holding that it was not possible to assess the exact item of property which was in the physical possession of the plaintiff, the trial court had observed that the proper remedy would be only to sue for partition. The appellate court confirmed the same.

4. I find that the consideration of the point of law involved was correctly approached by the trial court as affirmed by the

appellate court. It is possible for the co-owners to make arrangement for enjoyment of specific portions of joint properties for the sake of convenience even without partition. If the details of enjoyment of specific portions of properties are clearly brought out in evidence, courts will assist such arrangement and allow for retention of such enjoyment till a suit for partition is filed. However in a situation where the document of purchase by one co-owner shows only an undivided share and yet another person who is in defence threatens the plaintiff's specific enjoyment of any property, the person who is obstructed in peaceful enjoyment shall only resort to an action for partition and cannot thrust himself upon the co-owner who is in possession of any particular specific extent. The point of law that is involved is actually against the plaintiff and it is not possible to secure to him the benefit of injunction on the basis of joint possession as claimed by him.

5. The decisions of the courts below are confirmed and the 2nd appeal is dismissed.

(K.KANNAN)
JUDGE

08.09.2015
sanjeev