

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

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**R.S.A No. 4543 of 2014 (O&M)
Decided on : February 18, 2015**

Mahender Singh ... Appellant

Versus

Lali Devi ... Respondent

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Vimal K. Gupta, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Civil Suit No. RBT/328 of 2011/2013 brought before learned Civil Judge (Senior Division), Pataudi, District Gurgaon ('trial Court' – for short) by Mahender Singh (appellant herein) to seek declaration to the effect that he is co-owner in possession to the extent of half-share in the suit property detailed in para No.1 of the plaint, which has never been partitioned and for permanent injunction to restrain the respondent from seeking partition thereof, was contested by the respondent by filing a written statement averring that she had purchased part of the suit property from legal heirs of Smt. Asharfi and while denying all other averments contained in the plaint, it was alleged that the appellant had started raising construction after filing of the suit. A counter-claim was also preferred by the respondent to seek a decree of permanent injunction to restrain the

appellant from raising construction over the suit property and from alienating and cultivating it.

After completion of pleadings, learned trial Court framed issues, received evidence, heard parties and vide judgment/decreed dated 29.07.2013 dismissed appellant's suit with costs but decreed the counter-claim filed on behalf of the respondent by directing the appellant not to raise any construction over the suit property till it is partitioned by metes and bounds. The appellant challenged judgment/decreed passed by the learned trial Court vide Civil Appeal No.53/31.8.2013, which was dismissed by learned Additional District Judge, Gurgaon ('first appellate Court' – for short), vide judgment/decreed dated 28.04.2014 but concededly the judgment/decreed passed in the counter-claim was not challenged by the appellant in appeal.

I have heard learned counsel for the appellant.

Though, it is argued that judgments/decrees passed by the Courts below are illegal and against the evidence available on record, but it has remained undisputed that the respondent had purchased part of the suit property from co-sharers and proceedings for partition thereof are under way. In view of the established position of law that a co-sharer is entitled to sell his share in the joint property and in this situation, the only remedy available to a co-sharer is to seek partition of the joint property. Consequently, I do not find any reason to interfere with the impugned judgments/decrees, which proceed on these lines. Even otherwise, by not filing an appeal to challenge a decree passed in the counter-claim, the

appellant has to abide by its necessary implication and has abandoned his claim with regard to the portion in the suit property in possession of the respondent and the decree passed in counter-claim and against the plea of the appellant.

For the reasons recorded herein above, coupled with the fact that the appeal is not shown to involve any question of law much less a substantial one, I regret my disinclination to interfere with the concurrent and pure findings of fact recorded by the Courts below.

Dismissed.

No costs.

February 18, 2015
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[Mahavir S. Chauhan]
Judge