

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5158 of 2014(O&M)
Date of decision : December 8, 2015

Sahdev and others

..... Appellants

Versus

Ram Mehar and others

..... Respondents

RSA No. 5586 of 2014(O&M)

Ramphal

..... Appellant

Versus

Sahdev and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manoj Chahal, Advocate
for the appellant in RSA No. 5158 of 2014.

Mr. Rakesh Kumar Sharma, Advocate
for the appellant in RSA No. 5586 of 2014.

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?

Amit Rawal, J (oral).

CM No.12156-C in RSA No. 5158 of 2014

& CM No. 13286-C of 2014 in RSA No. 5586 of 2014

These are applications under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the applications, which are

duly supported by an affidavit, delay of 120 days and 184 days in refiling the appeals is condoned.

The applications stand disposed of.

RSA No. 5158 of 2014(O&M)

This order of mine shall dispose of two appeals as common question of law involves in both the appeals

The appeal bearing No.5158 of 2014 filed by the appellants-plaintiffs against the concurrent finding of both the courts below whereby suit for permanent injunction has been dismissed and RSA No. 5586 of 2014 has been filed by the appellant-defendant for setting aside of the decree whereby Rapat roznamcha dated 1.9.2008 has been declared as illegal, null and void and not binding upon the rights of plaintiff.

Learned counsel appearing on behalf of the appellants submits that the suit for permanent injunction with consequential relief of declaration setting aside of the rapat roznamcha dated 1.9.2008 had been filed. However, both the courts below have erroneously declined the relief of permanent injunction on the premise that no injunction against the co-sharer is maintainable as the plaintiff has not been able to prove exclusive possession whereas granted mandatory injunction qua setting aside of the rapat roznamcha by giving liberty to the parties to seek partition.

Learned counsel appearing on behalf of the appellants-defendants submits in RSA No. 5586 of 2014 submits that declaration/mandatory injunction for setting aside rapat roznamcha dated 1.9.2008 could not be granted as the plaintiffs failed to prove

illegality, much less perversity for effecting the aforementioned rapat roznamcha, thus substantial question of law arise for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book.

The courts below have found that the possession of the suit land is of the plaintiffs and defendant No.3 who have been held to be in joint possession being co-sharers, therefore possession of the suit land cannot be handed over either to plaintiffs or to defendant No.3.

It is settled law that no injunction can be granted against a co-sharer as no one of the co-sharer is found to be in exclusive possession which falls within the parameters of judgment of Full Bench of this Court in **Bhartu Vs. Ramsaroop 1981 PLJ 204** and Division Bench of this Court in **Bachan Singh Vs. Swaran Singh 2000 (3) RCR (Civil) 70**. However, the court below has set aside the rapat roznamcha dated 1.9.2008 being wrong and illegal on the premise that already in proceedings under Section 145 CPC it has been held that possession of the land would be granted by the receiver and ultimately as and when the parties seek partition, the possession of the same would be handed over to who shall be entitled after deducting expenses incurred for cultivation. The entire profit would also be handed over to him.

In view of the above, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any

illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeals are devoid of merits, accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

December 8, 2015
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