

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

RSA No. 6023 of 2014 (O&M)
Date of decision: August 27, 2015

Ashok Kumar

...Appellant

Versus

Harbir and others

...Respondents

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?

Present: Mr. Sudhir Aggarwal, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The property was admittedly held by the co-owners. They were in possession of their respective portions. One of the co-owners wanted some construction to be made and the other co-owner who was unwilling to such a course sought for injunction. The plaintiff did not produce a document of purchase showing his ownership but the court was prepared to rely on an admission of the defendants that the plaintiff was a co-owner. The trial court dismissed the suit but the Appellate Authority allowed the suit for injunction restraining the defendants from putting up construction and declined the relief of restraint against alienation. The court qualified that alienation of even a specific portion must be understood as the alienation of the share which the other co-owner is entitled to. In my view, the lower Appellate Court has stated the law correctly that every co-owner is entitled to every inch of an undivided land irrespective of whether

specific portions are being enjoyed. If the specific portion of enjoyment did not still constitute a final division of property by predicated the specific extent, then no co-owner can bring about on his land any modification without concurrence of the other co-owner. If the plaintiff as a co-owner objected and the defendants were still as co-owners wanted further construction, the only legal option open for them shall be to file a suit for partition and seek for allotment of their share and obtain an equitable allotment of the property already in their possession towards their share and put up any construction they please on the property so allotted in the final partition. Before that happened, a restraint order through decree was perfectly competent.

2. I make no modification and dismiss the appeal as involving no substantial question of law for consideration in favour of the defendant.

3. The second appeal is dismissed.

August 27, 2015
prem

(K.KANNAN)
JUDGE