

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

CR No.4036 of 2015(O&M)

Date of decision:12.7.2016

Raj Kumar @ Ram Kumar

....Petitioner

VERSUS

Hari Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Sanjay Mittal, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition has been directed against order dated 15.09.2014 passed by the Additional District Judge, Jind, whereby in the appeal preferred by the petitioner against the judgment and decree dated 07.06.1990 passed by the trial Court, findings on issue No.5 have been returned against the petitioner.

Counsel for the petitioner, on a query raised by the Court with regard to maintainability of the petition, has submitted that as the Court of Additional District Judge, Jind has not drawn any decree, there was no option with the petitioner except to file a revision petition against the order dated 15.09.2014.

I have heard counsel for the petitioner and perused the records.

The petitioner filed a suit for pre-emption against Hari Singh (vendee)/defendant No.1 and Smt. Phulli (vendor)/defendant No.2 in

respect of sale effected vide sale deed No.846 dated 16.06.1986 on the premise that defendant No.2 had sold the suit land out of a joint khewat in which the petitioner/plaintiff is a co-sharer, thus has a right of pre-emption. The suit filed by the petitioner was dismissed by the trial Court vide judgment and decree dated 07.06.1990 passed by Sub-Judge First Class, Narwana. The matter was carried in appeal by the unsuccessful petitioner/plaintiff that came to be allowed by the first Appellate Court. Hari Singh-respondent/defendant No.1 filed RSA No.1781 of 1991 titled Hari Singh Vs. Raj Kumar and others that was decided by this Court vide judgment dated 21.03.2014 whereby the question of law posed was answered in affirmative, the appeal was allowed and the matter was remanded to the first Appellate Court to decide issue No.5 “*whether defendant No.1 is also a co-sharer and had a superior right so as to thwart the claim of the plaintiff who is also claiming superior right being co-sharer?*”

In pursuance of the directions issued by this Court, the first Appellate Court recorded findings on issue No.5 afresh vide order dated 15.09.2014. The said issue has been answered in favour of defendant No.1 by holding that Hari Singh had a superior right of pre-emption to that of right of the plaintiff (petitioner herein).

As the Appellate Court in view of its findings on issue No.5 has affirmed claim of defendant No.1 in the suit property, the remedy available with the present petitioner was to challenge the judgment of first Appellate Court in appropriate proceedings in accordance with law. If the Appellate Court was obligated to draw a decree after recording findings on issue No.5, the petitioner could avail that remedy before the first Appellate Court by filing an appropriate application in this regard. However, a

revision petition against the findings recorded on a particular issue either by the trial Court or by the first Appellate Court is not maintainable.

In view of what has been discussed hereinabove, the petition is dismissed but without prejudice to rights of the petitioner to avail appropriate remedy in accordance with law.

JULY 12, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE