

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

131

Civil Revision No. 6515 of 2016 (O&M)

Date of Decision: September 29, 2016

JASBIR KAUR

-PETITIONER

VS

PARAMJIT KAUR AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Hitesh Kaplish, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

This is defendants No.1 revision petition against the order dated 08.12.2015 vide which the order dated 05.05.2014 passed by Civil Judge (Junior Division), SBS Nagar was partially modified.

Plaintiffs-respondents filed a suit for permanent injunction seeking to restrain the petitioner qua digging the land and further to give permission to brick kiln owner to dig the land in question. Further direction was sought not to obstruct the plaintiff from irrigating the land owned by the plaintiffs from the

electric tubewell connection. Admittedly, plaintiff No.1 and defendant No.1 are co-sharers. Trial Court passed an order thereby accepting the application under Order 39 Rule 1 and 2 CPC restraining the defendants from digging out earth from the suit land and also from giving the same to any brick kiln owner for the same purpose. Defendants were also restrained from obstructing the plaintiffs in the use of electric motor.

Defendants were also restrained from alienating the suit property in any manner except with prior permission of the Court. Lower Appellate Court while partially accepting the appeal, held that the plaintiffs have not made any prayer for restraining the defendants from alienating the suit property, therefore, the respondents cannot be restrained from alienating their share in the suit land as the property has not been partitioned till date by metes and bounds. The order passed by the trial Court was partially modified to the extent of allowing the defendants to alienate their share without any leave of the Court.

Having heard learned counsel for the petitioner, I see

no illegality in the order passed by the lower Appellate Court as the parties are found to be co-sharers. Co-sharer cannot be restrained from alienating the suit land even if specific khasra numbers are sold. Sale of specific khasra number out of joint land would be a sale of share in view of law laid down by this Court in **Bhartu vs Ram Sarup, 2001 PLJ 204 (Full Bench)**.

In view of aforesaid, there is no error of jurisdiction in the order passed by the lower Appellate Court.

The present revision petition is accordingly dismissed.

**(RAJ MOHAN SINGH)
JUDGE**

September 29, 2016

jyoti Y.

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No