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

RSA-1500-1989

Date of decision : 10.02.2016

Som Nath

...Appellant

Versus

Shanti Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Rapri, Advocate
for the appellant.

None for the respondent.

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)

The appellant is aggrieved of the partial dismissal of the suit as he sought a restraint against the defendant Shanti Devi for dispossessing him from the property in dispute shown in two parts A & B, described in the head note of the plaint, on the ground that he is the owner in possession of the property in dispute on account of having, left by his brother Megh Raj in a family partition, about twenty years ago. Megh Raj was unmarried and through the family settlement, the property came to his share. The family settlement was reduced into

writing on 09.10.1973. The aforementioned suit was contested by the defendant on the ground that Megh Raj was the brother of the plaintiff, however, it was alleged that defendant was legally wedded wife of Megh Raj being widow, who had inherited half share in the property along with the plaintiff. The property described in sub-head A in the plaint, is Khasra bearing No.33/4 measuring 8 biswas, which fact was intentionally suppressed in the plaint and the plot mentioning part B is Khasra bearing No.3/4 measuring 4 biswas. The house mentioned in the head note (a), the defendant is the owner of the half portion and possession of the half portion towards the side of Bhajan Singh on the western side i.e. the portion which was in possession of her husband Megh Raj. Regarding the property at sub-head (b), the defendant claimed herself to be absolute owner and in possession. It is a matter of record that the property was situated in Village Bara and not in Village Humanyunpur. The trial Court on the basis of the oral and documentary evidence found that the appellant-plaintiff was in exclusive possession of the house in dispute mentioned at sub-head (A) and the owner to be the extent of the half share and the defendant to be half share and enjoined the defendant not to dispossess the plaintiff forcibly except in due course of law, viz-a-viz the property mentioned in sub-head (A) with regard to the share of the plaintiff and not to interfere in his possession and rest of the

relief was denied.

Mr. N.S. Rapri, learned counsel appearing on behalf of the appellant submits that the Courts below have committed illegality in declining the other relief as the appellant-plaintiff had been found to be in exclusive possession of the property and the injunction ought not have been granted, thus, there is illegality and perversity in the order, much less, substantial question of law arises for determination of this Court.

There is no representation on behalf of the respondent despite service. Accordingly, I proceed to decide the appeal on merits.

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

Once it has been held that the appellant-plaintiff are the co-owners to the extent of the half share in the property, the remedy, if any, for the party was to seek the partition by filing the suit. In view of the findings rendered by the trial Court, the appellant-plaintiff has been found to be in exclusive possession of the house and therefore, the defendant has been enjoined and rest of relief claiming right and title in the property, has been declined. Be that as it may, the remedy, if any, is to seek the partition.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts

below, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

10.02.2016

yogesh

**(AMIT RAWAL)
JUDGE**