

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

1. RSA No.862 of 1989 (O&M)
Date of decision : 10.02.2016

Joginder Singh (Deceased) through LR.s.

...Appellant

Versus

Shri Kewal Krishan Abrol

...Respondent

2. RSA No.1079 of 1989 (O&M)
Date of decision : 10.02.2016

Joginder Singh (Deceased) through LR.s.

...Appellant

Versus

Kewal Kumar and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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: None for the appellant.

Mr. Alok Mittal, Advocate for respondents
(In Both Appeals).

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second

Appeals bearing No.862 of 1989 arising out of adjudication of Civil Suit No.213 dated 28.07.1984 titled as Joginder Singh Bali & another Vs. Sh. Kewal Krishan and another (hereinafter to be referred as the First Suit) and RSA No.1079 of 1989 arising out of civil suit no.198 of 1984 titled as Kewal Kumar Vs. Joginder Singh Bali and others (hereinafter to be referred as Second Suit).

In the first suit, Joginder Singh had sought injunction against defendant from dispossessing the plaintiff and defendant Nos.2 and 3 forcibly and illegally from the plot marked as ABCD in the red colour shown in the site plan whereas Kewal Krishan defendant No.1 in first suit and plaintiff in the second suit sought declaration as he is owner to the extent of 2/3rd share and also sought injunction from restraining the defendant No.1 from interfering into the peaceful possession of the plot. The second suit was decreed by holding that Kewal Krishan to be owner to the extent of 2/3rd share whereas in the first suit injunction has been declined on the ground that parties to the lis are co-owners and remedy if any was to seek partition. It is in these circumstances, the present appeals have been filed.

There is no representation on behalf of appellants nor his legal representatives if any. Accordingly, I proceed to decide the appeal on merits.

I am in agreement with the findings rendered by the trial Court affirmed by the lower Appellate Court in civil suit No.213 vis-a-vis the fact that once party are held to be co-owners, in the absence of the exclusive possession, injunction cannot be granted. Remedy, if any, is to seek

partition. The aforementioned proposition of law is no longer res integra as has been upheld by Full Bench & Division Bench Judgments of this Court in *Bhartu Vs. Ram Saroop*, 1981 PLJ 204 and *Bachan Singh Vs. Swaran Singh* 2000(3) RCR (Civil) 70. Vis-a-vis suit No.2, the trial Court partly decreed the suit while granting declaration to Kewal Krishan by holding to be 2/3rd share and declined the relief of injunction. Since, parties are co-owners, remedy, if any to the parties is to seek partition and not challenge the share in the property. Even in the first suit, it has been held that Kewal Krishan had 2/3rd share.

No ground is made out for interference, much less, no substantial question of law arises for determination.

Accordingly, appeals are dismissed.

10.02.2016

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**(AMIT RAWAL)
JUDGE**