

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

RSA No.501 of 2010

Date of Decision.02.08.2016

Ashwani Kumar

.....Appellant

Vs.

Amir Chand and others

.....Respondents

Present: Mr. Rakesh Chopra, Advocate
for the appellant.

Mr. BPS Dhaliwal, Advocate
for the respondents No.1 and 2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.8 is aggrieved of the judgment and decree passed by the lower Appellate Court modifying the judgment and decree of the trial Court vide which the suit of the respondents-plaintiffs for injunction as well as the declaration had been dismissed.

Mr. Rakesh Chopra, learned counsel appearing for the appellant-defendant No.8 submits that the respondents-plaintiffs sought for injunction that they could not be dispossessed forcibly as they are in exclusive possession of Khasra No.38//1/2/ measuring 2 kanals 6 marlas being co-sharers. He further submits that the original suit was filed against defendants Nos.1 to 7, who vide sale deed 30.03.1994 sold their shares to appellant-defendant No.8. The trial Court dismissed the suit as the respondents-plaintiffs had not brought on record/produced the complete

copy of the jamabadi for the year 1991.

He further submits that the lower Appellate Court did not grant the declaration qua setting aside the sale deed instead held that the sale deed would be valid qua the share of vendor and not of a specific khasra number. It is, under these circumstances, the instant appeal has been filed as the vendors had given a specific share and possession of the property in dispute. As regards the respondents-plaintiffs have been found to be not approached the Court with clean hands, lower Appellate Court should have also treated them in the same manner. He also submits that plea of mortgage was also set up but the same was disbelieved. The whole idea of mortgage was to show the possession, thus, urges this Court for setting aside of the judgment and decree passed by the lower Appellate Court *viz-a-viz* granting of injunction from forcible interference and dispossession by formulating the substantial questions of law drawn in the memorandum of appeal.

Mr. BPS Dhaliwal, learned counsel appearing for respondent Nos.1 and 2 submits that the grievance, if any, of the appellants-defendants would be against his vendors and not against the respondents-plaintiffs. Rightly so, the lower Appellate Court discarded the plea of the defendants before the trial Court. Even the sale deed was not valid in law and since the defendants No.1 to 7 had sold their shares, the appellant-defendant No.8 was impleaded accordingly and the suit was amended for seeking declaration wherein the aforementioned sale deed was challenged.

I have heard learned counsel for the parties, appraised the paper book and of the view that admittedly, both the parties are co-sharers. The question whether the appellant-defendant No.8 had been given the possession of the same cannot be determined in suit for injunction, for, the property has not been partitioned. On the contrary, the respondents-

plaintiffs had been found in exclusive possession of khasra No.38//1/2 measuring 2 kanals 6 and therefore, as per the *ratio decidendi* culled out in the judgment of Full Bench judgment of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204** and Division Bench judgment in **Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70**, the suit for permanent injunction against the co-sharers is not maintainable. The remedy, if any, for the appellant-defendant No.8 would be to seek partition in accordance with law. However, the lower Appellate Court has granted injunction indefinitely. In my view, injunction can only be confined till the parties seek the remedy of partition. Either of the parties are left at liberty to seek the remedy of partition.

With the aforementioned observations, the judgment and decree of the lower Appellate Court viz-a-viz the validity of sale deed qua the share of vendor, is upheld but the injunction shall be operative in the manner and mode as indicated above. The second appeal is disposed of on the above terms.

(AMIT RAWAL)
JUDGE

August 02 , 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No