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

RSA-1903-2011

Date of decision : 21.01.2016

Suraj Bhan and others

...Appellants

Versus

Ishwar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. N.D. Achint, Advocate
for respondent No.1.

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 appellants -defendants are in regular second appeal against the judgment and decree rendered by the lower Appellate Court, whereby the suit filed at the instance of respondents-plaintiffs seeking declaration and permanent injunction, has been decreed in essence, the judgment and decree of the trial Court has been set aside.

Mr. Amit Jain, learned counsel appearing on behalf of the

appellants submits that the parties to the *lis* were the co-sharers and remedy, if any, was to seek partition not declaration, once the revenue record reflected the ownership of the parties and no injunction against the co-sharer can be passed, except if it is found to be in exclusive possession. He further submits that there is a big chunk of land and the party had partitioned the entire land except the land bearing Rect. No.41, Killa No.5/1 (5-12) measuring one kanal situated in village Lakhnola, Tehsil and District Gurgaon. The lower Appellate Court without noticing the aforementioned facts erroneously decreed the suit, thus the following substantial questions of law arises for determination of this Court:-

1. Whether an agricultural land (Chahi) having joint khata is liable to be partitioned in a competent court of law instead of seeking declaration and injunction?
2. When the partition with respect to the other rect/killla number had already been effected and in view of this, whether the suit is maintainable or not?

Mr. N.D. Achint, learned counsel appearing on behalf respondent No.1-defendants submits that there is no illegality and perversity in the findings rendered by the lower Appellate Court. The partition had already been effected and the Rect. No.41, Killa No.5/1 (5-12) measuring one kanal, had also fallen to the share of the plaintiff, rightly so, the declaration was sought and prays for dismissal of appeal.

appraised the paper book.

Shorn of the facts and submissions as noticed above, I am of the view that since, the land as specified above had not been partitioned and nothing prevented to parties to seek the partition of the land and this fact has been noticed by the trial Court while dismissing the suit. The remedy, if any, was to approach the Revenue Authority, as the land is agriculture in nature and to seek partition in order to avoid any complications viz-a-viz the possession/injunction. Even otherwise, no injunction can be granted against the co-owner, if he is not in exclusive possession.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court is hereby set aside and the judgment and decree of the trial Court is upheld and the substantial questions of law are answered in favour of the appellants and against the respondents.

It is made clear that the party shall be at liberty to seek partition of the aforementioned property i.e. Rect. No.41, Killa No.5/1 (5-12) measuring one kanal situated in village Lakhnola, Tehsil and District Gurgaon by approaching the Revenue Authority in accordance with law.

Accordingly, the appeal is allowed.

21.01.2016
yogesh

(AMIT RAWAL)
JUDGE