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

**RSA-1375-2012 (O&M)
Date of decision : 09.08.2016**

Kanshi Ram and another

... Appellants

Versus

Gian Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Bhardwaj, Advocate
for the appellants.

Mr. Krishan Singh, Advocate
for respondent Nos.1 and 2.

Mr. Satbir Rathore, Advocate
for respondent No.3.

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 Nos.1 and 2 are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondent(s)-plaintiff(s) has been decreed in toto despite the fact that both the parties are share-holders, in essence, the plaintiff-Swaran son of Kewal Ram is the brother of the defendants.

Mr. Karan Bhardwaj, learned counsel appearing on behalf of the appellants-defendants No.1 and 2 submits that judgment of the trial

Court was most innocuous as two khasra bearing Nos.11//4 and 11//14 are involved in the controversy/dispute. The partition proceedings are pending. It is a conceded position on record that respondent(s)-plaintiff(s) had raised the construction on the half portion of khasra No.11//4 and under the garb of raising the construction without any partition, sought the restraint order against the appellants-defendants No.1 and 2 not to raise the construction on khasra No.11//14, which is in their exclusive possession. It is, in this background of the matter, the trial Court dismissed the suit, but the lower Appellate Court decreed the suit restraining the appellants-defendants No.1 and 2 from raising construction on khasra No.11//14., thus, urges this Court for formulation of the following substantial question of law arises for determination:-

- (i) Whether the suit at the instance of the co-sharer seeking restraint order against a co-sharer is/was maintainable or not?

Mr. Krishan Singh, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that once the partition proceedings are pending, no harm and prejudice would be caused to the appellants-defendants Nos.1 and 2 in case restraint order remains intact till the partition proceedings attained finality.

Mr. Satbir Rathore, learned counsel appearing on behalf of defendant No.3 who is none-else, but the son of the plaintiff-Swaran supports the findings of the lower Appellate Court and as well as the arguments of Mr. Krishan Singh, Advocate, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised

the paper book.

This Court while sitting in the civil roster has come across many cases, where the civil suits at the behest of the co-sharers are being filed seeking restraint orders qua forcible interference/dispossession or qua the construction, sometime during the pendency of the partition proceedings and few in the absence of initiation of the partition proceedings. In the instant case, it is a conceded position on record that partition proceedings are pending and the respondent(s)-plaintiff(s) had raised the construction on the half portion of the khasra No.11//4 and under the garb of raising the construction without any partition, sought the restraint order against the appellants-defendants, who are in exclusive possession. No doubt that the appellants-defendants cannot change the nature of the land as per the ratio decidendi culled out in the judgment of Full Bench judgment of this Court in “Bhartu V/s Ram Sarup” 1981 PLJ 204 and Division Bench judgment in “Bachan Singh Vs. Swaran Singh” 2000(3) RCR (Civil) 70, but the complete restraint order in the facts and circumstances noticed above would be inequitable.

Since, the partition proceedings are pending, I am of the view that findings rendered by the lower Appellate Court are not liable to be sustained and suffers from illegality and perversity particularly when the respondent(s)-plaintiff(s) has raised the construction on some portion of the khasra No.11//4 and accordingly, the findings of the lower Appellate Court are hereby set aside and that of the trial Court is restored. The substantial question of law as noticed above is answered in favour of the appellants-defendants No.1 and 2. However, none of the parties will be claiming any

equity in respect of any construction. They shall be bound by the partition proceedings and shall be entitled to claim and stake the plea of possession if permissible in law.

With the aforementioned observations, the appeal stands allowed.

09.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No