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

**RSA-4494-2011 (O&M)
Date of decision : 29.07.2016**

Salim Khan

... Appellant(s)

Versus

Prem Kumari and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Gupta, Advocate
for the appellant.

Mr. H.K. Aurora, Advocate
for respondent No.6.

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-plaintiff is aggrieved of the dismissal of the suit claiming declaration to the effect that the plaintiffs are the owner in possession of land measuring 6 kanals 13 marals as described in the suit land i.e. (a) land measuring 5 kanals 13 marals contained in Khewat No.6, Khatoni No.7, comprised in Rect. No.5 Killa No.18/2(3-2), 20/2/1(0-18), 20/2/2(1-0), 20/6(0-13) and (b) land measuring 1 kanal 0 maral contained in Khewat No.7, Khatoni No.8 and compromised in Rect. No.22, Killa No.12/3min(1-0) as entered in Jamabandi for the year 2000-2001, situated in village Salempur, H.B. No.14, Tehsil Dasuya, Distt. Hoshiarpur AND the sale deed dated 08.04.1992 and 17.03.2004 are ineffective and inoperative,

so far as rights of plaintiffs are concerned, with permanent injunction restraining the defendants from claiming any right and interfering with the possession of plaintiff for ever, on the ground that the respondent Nos.1 to 5 have sold excess share.

Mr. Sanjay Gupta, learned counsel appearing on behalf of the appellant-plaintiff submits that Barkhurdar Khan was the owner of the land measuring 129 kanals 12 marals. He survived by two sons, namely, Sarwar Khan and Nawab Khan. The plaintiffs are the successors-in-interest of Sarwan Khan and defendant Nos.1 to 5 are the successors-in-interest of Nawab Khan. Since, the property was inherited by both the sons in half share each i.e. 64 kanals 16 marlas, but the LRs of Nawab Khan had sold the excess share i.e. 6 kanals 13 marals vide various different sale deeds, thus, the excess share i.e. 6 kanals 13 marals have been sold. In this background of the matter, the suit, aforementioned, was filed. He submits that the plaintiffs have proved on record through the testimony of Halqa Patwari regarding the aforementioned fact and noticed by the trial Court in paragraph 13 which reads thus:-

“13. These issues are taken up in order to avoid repetition of appreciation of evidence. Onus to prove all these issues was upon the plaintiffs. In order to prove these issues, the plaintiffs have examined Halqa Patwari, Sanjiv Kumar as PW1 who has brought the original record and has stated on oath that plaintiffs are in exclusive possession over land measuring 5k-13ml comprised in Khewat No.6 as per Khasra Girdawri. He has further stated on oath that the defendants and their predecessor had sold land more than their share. Further plaintiff No.1 himself stepped into witness-box and has

deposed on the lines of pliant. Both these witnesses have remained intact in their cross-examination.”

He further submits that the suit has been declined on the ground that the plaintiffs should have adopted the remedy of partition, thus, urges this Court for setting aside of the findings or any other modification or any direction which this Court may deem fit, by formulating the following substantial questions of law:-

1. Whether defendant Nos.1 to 5 have sold the property in excess than their share.
2. Whether the suit could have been dismissed in the manner and mode as noticed above.

Mr. H.K. Aurora, learned counsel appearing on behalf of the respondent No.6-defendant submits that all the defendant Nos.1 to 5 have been proceeded *ex parte*. The defendant No.6 has purchased the land measuring 15 marlas. The partition proceedings at his instance qua his land are stated to be pending before the revenue Court, thus, urges this Court that the findings rendered by both the Courts below are perfect, legal and justified and prays for dismissal of the appeal by upholding the same.

I have heard the learned counsel for the parties and appraised the paper book and of the view that a categorical finding has come on record that the defendant Nos.1 to 5 had sold the excess area of 6 kanals 13 marals.

Mr. Sanjay Gupta, Advocate submits that owing to the dismissal of the suit, in case, the appellant-plaintiff seeks the partition, he has an apprehension that he will not be allowed to attend the partition proceedings before the Revenue Court.

In view of the aforementioned facts and circumstances of the case, I am of the view that the appellant-plaintiff is relegated to seek the partition of the entire land. The matter is pending before the Revenue Court which shall take into consideration the partition of the entire land not only with respect to the area purchased by the defendant No.6.

The appellant-plaintiff shall also be at liberty to participate in those proceedings and stake his claim with regard to his share alleged to have been sold in excess by the defendant Nos.1 to 5.

For the foregoing reasons, the judgement and decree of both the Courts below are hereby modified to the aforesaid extent. The substantial question of law bearing No.1 is answered in favour of the appellant-plaintiff and second is not required to be answered.

Accordingly, the appeal stands disposed of in the aforementioned terms.

29.07.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No