

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

RSA No.3777 of 2012 (O&M)
Date of decision : 22.01.2016

Dharam Chand (deceased) through his LRs and ors.

...Appellants

Versus

Krishan Bala

...Respondent

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: Mr. Kanwal Goyal, Advocate for appellants.

Mr. Hardip Singh, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of fact, whereby suit for possession at the instance of plaintiff in respect of land measuring 5 Marlas 4 Sarsahi, has been decreed.

Mr. Kanwal Goyal, learned counsel appearing on behalf of appellants-defendants submits that suit for possession was filed on 08.01.2001. However, during the pendency of the suit, appellant vide exchange deed dated 23.06.2004 had sold the land measuring 2 kanals 4 Marlas of co-sharer to Amar Chand and in this regard mutation bearing No.335 was entered on 30.06.2004. This fact was duly incorporated in the

amended written statement which was allowed by the Courts below. The remedy, if any for the respondent-plaintiff was to seek the partition of the land by approaching the competent Court/Forum as the land was agricultural in nature and thus submits that following substantial question of law arises for determination by this Court:-

- 1) Whether in view of subsequent events and amended written statement having been permitted to be placed on record, the status of the appellant-defendants would be of co-sharer or not?
- 2) Whether the respondent-plaintiff in view of the exchange deed dated 23.06.2004 was required to seek the appropriate relief?

Mr. Hardip Singh, learned counsel appearing on behalf of respondent-plaintiff submits, that concurrent findings of fact cannot be interfered with until and unless the substantial question of law arises. At the time of filing of the suit, the status of the appellant-defendant was that of the trespasser. As per the Demarcation report, it has been found that defendants were in illegal possession. The acquisition of the co-ownership during the pendency of the suit would be immaterial, & thus, prays for dismissal of the appeal.

I have heard learned counsel for parties and appraised the paper book and of the view that appeal deserves to be allowed for the following reasons:-

Once the trial Court on application filed by the appellant, allowed the amendment of the written statement admitting the appellant to

incorporate the exchange deed noticed above, much less, mutation, the status of the appellant was none-else but that of co-ownership. The respondent-plaintiff is required to seek amendment or move an appropriate application by invoking the jurisdiction of Punjab Land Revenue Act as the nature of the land is agricultural, for, as per Section 123 of the Punjab Land Revenue Act, Civil Court does not have any jurisdiction to grant preliminary decree in case where parties approaches for partition of agricultural land. This fact has totally not been noticed by the Courts below while decreeing the suit. The Demarcation Report though proved that appellant-defendants were not having ownership of the property but subsequently on acquisition of the area measuring 2 kanals 4 marlas, they have become co-owners.

Keeping in view the aforementioned facts, I am of the view that the questions of law noticed above are answered in favour of the appellant-defendants and against the respondent-plaintiff. Accordingly, impugned judgment and decree of the Courts below are hereby set aside.

Appeal stands allowed.

Nothing said hereinabove shall effect the right of the respondent-plaintiff in case choose to seek partition of the property by approaching the competent Court of law/Revenue Authorities.

22.01.2016

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**(AMIT RAWAL)
JUDGE**