

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

**RSA-5422-2012 (O&M)
Date of decision : 29.09.2016**

Jagmohan Singh

... Appellant

Versus

Balbir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Malhotra, Advocate
for the appellant.

Mr. K.S. Kang, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the decreetal of the suit for injunction restraining him or their agents from changing the nature of land in dispute by raising any kind of construction in any manner whatsoever on the valuable land in dispute measuring 5 kanals 2 marlas situated at Village Talwara HB No.602, Tehsil Mukerian comprised in Kh. No.4463/2707 (4 kanals 13 marlas), 4465/2707 (0 kanal 9 marals) as per Jamabandi for the year 1987-88 and shown in the site plan.

Mr. R.S. Malhotra, learned counsel appearing on behalf of the appellant-defendant submits that the suit for injunction against co-sharer is not maintainable. There was already a family settlement, whereby the property has been partitioned and the parties are in their respective possession and even acted the same by selling the land and therefore, injunction ought not to have been granted as the respondent-plaintiff had

also sold the land and it was not objected to *vice versa*. There is a specific stand of the appellant-defendant in the written statement that the property was not joint, thus, urges this Court for setting aside the judgment and decree under challenge.

Mr. K.S. Kang, learned counsel appearing on behalf of the respondent-plaintiff submits that as per the *ratio decidendi* culled out by the Hon'ble Full Bench judgment of this Court in “Bhartu vs. Ram Sarup” 1981 PLJ 204”, and as well as, Division Bench of this Court rendered in “Bachan Singh vs. Swaran Singh” 2000 (3) RCR (Civil) 70, a co-owner cannot change the nature of the land until and unless joint property is partitioned. The revenue record brought on record shows the joint 'khata', thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the as per the ratio decidendi culled out by the Hon'ble Full Bench judgment of this Court in “Bhartu's case (supra) and as well as by Division Bench in “Bachan Singh's case (supra), a co-owner can seek the injunction against the co-sharer viz-a-viz the change of the nature of land. Precisely, this very injunction has been granted by both the Courts below after examining the revenue record which shows the jointness, thus, the appellant-defendant has failed to prove the family settlement, much less, placed on record the copy of the same to show that the alleged family settlement was executed. Since the appellant-defendant is being injuncted, the remedy, if any, for the appellant-defendant, in my view, was to seek the partition in case so advice.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the

appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

29.09.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No