

RSA No. 1016 of 2013(O&M)
Date of Decision: 11.2.2016

Baldev Singh

---Appellant

versus

Kulwant Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Naveen Sharma, Advocate
for the appellant**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

CM No. 2730-C of 2013

Prayer in this application is for condonation of delay of 129 days in re-filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the appellant, the application is allowed and delay of 129 days in re-filing the appeal is condoned.

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The present appeal lays challenge to consistent findings recorded by the courts below whereby the suit filed by the appellant seeking injunction against his co-sharers in respect of the suit land measuring 34 kanals 3 marlas, detailed in the head note of the plaint, has been dismissed by the trial court and the judgment and decree passed by the trial court has

been affirmed in appeal.

The main grievance of the appellant-plaintiff is that some land is situated at Bathinda-Goniana main road near Delhi Public School on its opposite side of the road and respondents No. 1 and 2 tried to sell the entire land situated on the main road out of which they have already sold some land to respondents No. 3 to 5. It is averred that the suit land is joint property of all the co-sharers and thus, respondent Nos. 1 and 2 have no right to sell the prime land without getting the suit land partitioned.

The learned trial court after taking into consideration the Full Bench decision of this Court **Bhartu vs. Ram Sarup 1981 PLJ 204** and other judgments referred to in para 13 of the judgment of the trial court, has arrived at a conclusion that the property having not been partitioned, remedy for the appellant is to approach the competent authority for partition of the joint land but he is not entitled to seek an injunction against his co-owners qua alienation of any portion of the joint land as sale by a co-owner would not create any better rights in favour of the vendee who would merely step into the shoes of the vendor. In this view of the matter, I do not find any error much less illegality in the findings recorded by the Courts below when otherwise no substantial question of law as has been sought to be raised or otherwise, arises for adjudication.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

11.2.2016
PARAMJIT