

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

**RSA No.1101 of 2016 (O&M)
Date of decision:10.03.2016**

Narinder Singh ... Appellant
Vs.

Sharanjit Singh ... 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. M.S.Khaira, Senior Advocate with
Mr. D.S.Randhawa, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.3003-C-2016

For the reasons stated in the application, duly supported
by an affidavit, delay of 5 days in filing the appeal is condoned.

C.M. stands disposed of.

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The appellant-plaintiff is aggrieved of the dismissal of suit
by the Lower Appellate Court vide judgment and decree dated
1.10.2015.

Mr. M.S.Khaira, learned Senior Counsel assisted by
Mr. D.S.Randhawa, Advocate submits that only injunction was
sought. As per the previous judgment and decree, brother, vendor of

the defendant was restrained from selling the specific khasra number in joint ownership, yet he flouted the judgment and decree and sold the land to the present defendant. It is in these circumstances, the aforementioned suit was decreed. However, the Lower Appellate Court reversed the findings, which are totally alien to the settled proposition of law, much less, the judgment rendered by the Court vis-a-vis entitlement and injunction against the co-sharers. He further submits that it was the defendant, who stepped into shoes of his brother to seek partition and not of the plaintiff, therefore, injunction ought to have been granted.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that the appeal sans merits, for the reasons that in case the vendor of the defendant had deviated from the judgment and decree dated 10.09.2009, remedy, for the appellant-plaintiff, is to seek execution. In such situation, the status of the defendant is of co-sharer. No evidence has been led to show whether he was in symbolic possession or physical possession, much less, vis-a-vis the exclusive possession of the plaintiff.

Thus, in view of the aforementioned observations, defendant had become co-sharer. In order to seek injunction, plaintiff must prove the exclusive possession, in view of the law laid down by Division Bench, as well as, Full Bench of this Court in **Bhartu vs. Ram Sarup 1981 PLJ 204** and in **Bachan Singh vs. Swaran Singh**

2000(3) RCR (Civil) 70, whereas, no evidence has been led to show the exclusive possession, much less, handing over of symbolic or physical possession. Remedy, if any, is to seek partition, in case, the plaintiff was aggrieved of not remaining in joint possession with the defendant. The findings rendered by the Lower Appellate Court in paragraph Nos.19 and 20 are perfectly legal and justified, which read thus:-

“19. As far as the law relied upon by the learned counsel for the respondent is concerned, the same is not disputed, however, it pertains to those cases where a share is sold by the person who is not in possession of any part of the land or a share of joint Hindu Undivided Family coparcenary property is sold and in that eventuality the remedy with the vendee is to seek partition and separation of his share purchased in the joint land. In the case in hand two brothers acquired the land in equal shares from their father Tek Singh. Both became co-owners in joint possession. Other brother Iqbal Singh in the civil suit, as detailed above, suffered a statement not to sell any specific khasra number in which he is not in possession and not to sell land beyond his share from the joint Khewat, which he has not done. The suit property has not been pleaded to be a coparcenary Hindu Undivided Family Property. In that eventuality the

law relied upon by the learned counsel for the respondent is not attracted towards the facts and circumstances which have appeared in the case in hand, in the opinion of this Court.

20. In these circumstances and in the light of said discussion and observations, this Court is of an opinion that after purchasing the share from brother Iqbal Singh, the defendant Sharanjit Singh has stepped in his shoes and has become co-owner in joint possession alongwith plaintiff. No injunction can be granted against a co-owner in joint possession. Plaintiff Narinder Singh has failed to establish his exclusive possession over the suit land. In that eventuality the permanent injunction granted in favour of plaintiff Narinder Singh and decreeing of the suit by the learned trial Court vide impugned judgment dated 04.12.2013 is illegal, in the opinion of this Court and accordingly, the same is set aside with the result the present appeal stands accepted with costs, on account of which the suit of the plaintiff stands dismissed with costs. Decree sheet be prepared accordingly. Appeal filed be consigned to the record room and record of the learned trial Court be returned forthwith.

Pronounced in the open Court.”

In view of the aforementioned observations, I do not

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intend to differ with the findings rendered by Lower Appellate Court below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 10, 2016
savita