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

**RSA-1061-2015 (O&M)
Date of decision : 07.04.2016**

Rita and another

... Appellants

Versus

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Katnoria, Advocate
for the appellants.

Mr. Gurcharan Singh, Advocate
for respondent No.1.

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)

CM-3150-C-2015

For the reasons mentioned in the application, the delay of 31 days
in refiling the appeal is condoned.

CM stands disposed of.

RSA-1061-2015

The appellants-defendants are aggrieved of the concurrent findings
of fact and law, whereby the suit for possession and recovery of mesne
profits/damages has been decreed.

Mr. S.S. Katnoria, learned counsel appearing on behalf of the

appellants-defendants submits that the property measuring 1305 sq. ft. owned by Mam Raj, after his death, succeeded 1/6th share of both two brothers and four sisters. Appellant No.1-defendant Rita, did not sell her 1/6th share, the sale deed dated 13.03.2003 is on behalf of other co-sharers, the suit for possession and recovery was not maintainable, at the best, the only remedy was to file suit for partition. Appellant No.1-defendant Rita has become a co-sharer. The counter-claim filed challenging the sale deed, has not been dismissed on merits, much less, there is no adjudication on the merits and urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. Gurcharan Singh, learned counsel appearing on behalf of respondent No.1-plaintiff submits that at the time of the sale deed, the possession of the property was handed over, but thereafter, defendant Nos.1 to 5 again entered into possession, which necessitated the respondent(s)-plaintiff(s) to institute the suit on 20.10.2007. No evidence has been placed on record to show that appellant No.1-defendant Rita was owner of the property. Neither there any challenge to the sale deed dated 13.03.2003, the counter claim has been dismissed for want of Court fee otherwise, it was also time-barred. The appellants-defendants occupied the property without any title and right, rightly so, the mesne profits have been granted and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. During the course of the arguments, Mr. S.S. Katnoria relies upon the judgment of Hon'ble Supreme Court rendered in 'Kammana Sambamurthy (deceased by LRs) V/s Kalipatnapu Atchutamma (deceased by LR) and

others”, AIR 2011 Supreme Court 103, to contend that in case, few of the co-owners have agreed to sell the property without signatures and consent of other co-owners, the said agreement would be confined to their share only, but of other co-owners, who had not given their consent. The present case is not the case of such kind, where the share of appellant No.1-defendant Rita had been proved. No evidence has been come on record to show that after the demise of Mam Raj, appellant No.1-defendant Rita succeeded to 1/6th share. The sale deed aforementioned is in respect of property measuring 1350 square feet. The respondents-plaintiffs were put into possession, but thereafter dispossessed and filed the suit in the year 2007. If at all appellant No.1-defendant Rita had any grievance, she could have challenged the sale deed by proving her case qua 1/6th share. The counter claim has also been dismissed for want of court fees. In the absence of any declaration qua her share, she could not assail the finding with regard to the claiming suit for possession.

Keeping in view the aforementioned facts and circumstances of the case, 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 question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

07.04.2016
yogesh

(AMIT RAWAL)
JUDGE