

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1968 of 2015
Date of decision : May 10, 2016

Vinod

..... Appellant

Versus

Hawa Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Malik, Advocate
for the appellant.

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).

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking permanent injunction filed against the respondent.

Learned counsel for the appellant submits that appellant had purchased the property vide sale deed dated 3.4.2008 and thereafter his name has been shown to be co-owner. The jamabandi for the year 2000-2001 was placed on record by way of additional evidence. Hawa Singh is stranger to the property. His father Manga Ram, though was co-sharer directly transferred the property in favour of his son Hawa Singh and grand son, therefore, the plea of maintainability of the suit against a co-sharer, who is in exclusive possession, ought not to have come in the way. All these aspects have not been noticed by the courts below, thus there is illegality and perversity in the impugned judgment and decree and urges this Court to formulate substantial questions of law as carved out in the Memorandum of Appeal.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the Mutation Ex.P-10 has not been proved on record, though the lower appellate court allowed the plaintiff to place on record khasra girdawaries and jamabandi by way of additional evidence. In the absence of proof of transfer of share of property by Manga Ram in favour of his grand son, Hawa Singh being son of Manga Ram cannot be said to be co-sharer. There is no evidence with regard to exclusive possession, therefore in view of such situation, the ratio decidendi culled out by Full Bench of this Court in **Bhartu Vs. Ramsaroop 1981 PLJ 204** squarely applies to the present case. The remedy, if any, for the appellant is to seek partition and injunction and not by filing simpliciter suit for injunction, rightly so, the courts below have dismissed the suit.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

May 10 , 2016
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