

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3470 of 2016 (O&M)

Date of Decision: October 27th, 2016

Manoj Kumar & others

...Appellants

Versus

Ram Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ravi Malik, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the impugned judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiff seeking restraint order for raising construction without partition, has been decreed.

Mr.Ravi Malik, learned counsel for the appellant-defendants submits that the appellant-defendants had purchased the property vide different sale deeds as indicated in Para 20 of the judgment rendered by the Lower Appellate Court. In fact, it is specific portion and, therefore, there cannot be any restraint order qua construction. Whole partition has already been proved and pleaded, but the Lower Appellate Court has not appreciated the same and, therefore, there is illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that jamabandies Ex.P1 to Ex.P11 prove that the parties are co-sharers and joint owners and the sale deeds produced on

record show the purchasing of particular share but not specific portion. It is settled law that where a co-sharer sells a share, the vendee becomes a co-sharer. The share has to be determined in the suit for partition. In the absence of the partition, one cannot raise construction on the land of his choice, which is more valuable. The aforementioned view is drawn from the ratio decidendi culled out in **Bhartu Versus Ram Sarup, 1981 PLJ 204.** The remedy for the appellant-defendants, instead of agitating qua the construction, lies in a competent Court of law, i.e., the Court having the jurisdiction to grant partition.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Lower Appellate Court, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for determination.

Appeal stands dismissed.

October 27th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No