

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

**RSA No.5999 of 2015 (O&M)
Date of Decision.17.11.2016**

Bhim Singh

.....Appellant

Vs

Smt. Sumitra and another

.....Respondents

Present: Mr. M.S. Kathuria, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.14984-C of 2015

For the reasons stated in the application, delay of 67 days in re-filing the appeal is condoned.

Application is allowed.

C.M. No.14985-C of 2015

For the reasons stated in the application, delay of 17 days in filing the appeal is condoned.

Application is allowed.

RSA No.5999 of 2015 (O&M)

In pursuance of the order dated 07.10.2016, costs of ₹2500/- has been paid and the receipt filed in the Court with regard to the same is taken on record.

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking permanent injunction has been dismissed by both the Courts below.

Mr. M.S. Kathuria, learned counsel appearing for the appellant-plaintiff submits that by virtue of registered mortgage deed dated 16.06.2008

alleged to have been executed by defendant No.2, the appellant-plaintiff was put into possession and a mutation in this regard was also sanctioned. There was a perceptible threat of forcible interference and dispossession and it is in this background of the matter, the suit aforementioned was filed as the defendant was trying to construct the boundary wall in the area in possession of the plaintiff. In fact, the mortgage deed reflects the shares of the defendants, thus, all the co-sharers are owners in possession of every inch of the land. This aspect has totally been ignored by the Courts below, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that as per the records and perusal of the judgments, it is borne out that the plaintiff has miserably failed to produce any documentary evidence to show the exclusive possession. In the absence of the same, a co-sharer cannot obtain injunction against the other co-sharers in view of the ratio decidendi culled out by Full Bench of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204** and Division Bench judgment in **Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70.** The remedy available in that eventuality is only to seek partition, rightly so, the suit for permanent injunction has been dismissed by both the Courts below.

For the reasons aforementioned, I do not intend to differ with the judgment and decree passed by the Courts below as the same are based upon the correct appreciation of fact and law, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2016
Pankaj*