

RSA No.3313 of 2014 (O&M)

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

RSA No.3313 of 2014 (O&M)

Date of Decision: January 18, 2016

Ramesh Chander

...Appellant

Versus

Sarbati & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.7669-C of 2014

Prayer in this application is for impleading the legal representatives/heirs of deceased-respondent, namely, Udey Singh son of Badlu Ram, who has expired on 16.07.2012 leaving behind his legal representatives as detailed in para 2 of the application. Out of these legal representatives, fourth legal representative is Satish son of Udey Singh, who has also expired on 18.10.2000 and details of his legal representatives are mentioned in para 4 of the application.

Apart from Udey Singh-respondent No1, Deep Chand son of Badlu Ram-respondent No.2 has also expired on 06.06.2005 leaving behalf his legal representatives as mentioned in para 5 of the application.

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Dharamvir son of Keri Singh-respondent No.7 has expired on 31.03.2002 leaving behind her legal representatives as detailed in para 6 of the application.

Similarly, Rajbir Singh son of Kehri Singh-respondent No.8 has expired on 07.01.2008 leaving behind his legal representatives mentioned in para 7 of the application.

It has been stated that apart from the above mentioned legal representatives, there is no other person who would be the legal representative/heir of the deceased-respondents. The application is supported by an affidavit of the appellant-Ramesh Chander son of Fateh Singh. The memo of parties appended alongwith the appeal has also been filed.

In view of the above, the legal representatives/heirs of respondents, namely, Udey Singh son of Badlu Ram-respondent No.1, Satish son of Udey Singh, Deep Chand son of Badlu Ram-respondent No.2, Dharamvir son of Keri Singh-respondent No.7 and Rajbir Singh son of Kehri Singh-respondent No.8, as stated above are impleaded as parties to the appeal, subject to all just exceptions, for the purpose of the present litigation only.

The application stands allowed.

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Challenge is this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Rohtak, dated

25.02.2009, whereby, the suit filed by the appellant-plaintiff seeking permanent injunction restraining the respondent-defendants who are joint owners in possession with him from alienating any specific killa number or a portion thereof as mentioned in the head note of the suit, stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Rohtak, on 29.10.2013.

It is the contention of the learned counsel for the appellant that the appellant-plaintiff is the owner in possession of the suit land alongwith the respondent-defendants. The respondent-defendants, prior to partition of the land, have started disposing and alienating the suit property by selling specific khasra numbers. Because of this action on the part of the respondents, the right of the appellant-plaintiff has been prejudiced as he would be deprived of the prime land at the time of partition. He, thus, contends that the sale/alienation of the suit property by the respondent-defendants who were the co-sharers to some other defendants, is not sustainable and the present suit deserves to be decreed by allowing the present appeal and setting aside the impugned judgments and decree passed by the Courts below.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any illegality in the

same.

It is not in dispute that the suit land is a joint property and the appellant and the respondent-defendants are the co-owners. If that be so, as per the judgments of the Full Bench of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and **Ram Chander Vs. Bhim Singh & others, 2008 (4) CCC 2**, the findings as recorded by the Courts below, cannot be faulted with as they are based on the principle of law enunciated in the above mentioned two Full Bench judgments. It has been rightly held that the sale of the land for the specific portion, if any, will be deemed to be the share from the joint khewat and the vendee will be deemed to be co-sharer in the entire joint khewat. This is based upon the settled principle that the vendee will only step into the shoes of the co-sharer. If that be so, the right of the appellant-plaintiff would not be adversely effected. The remedy of partition of the suit property by way of *metes and bounds* is available to the appellant-plaintiff which he can avail of, in accordance with law.

Nothing has come on record that the land which has been alienated by the respondent-defendants is in excess to their share in the property, nor has it come on record that they were not entitled to the said sale. In case, specific khasra numbers have been sold, in the light of the Full Bench judgments of this Court referred to above, the vendees would only be entitled to be termed as co-sharer to the

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joint land and not of the specific land as per the sale deed as is apparent from the law referred to above. Thus, the judgments and decree passed by the Courts below cannot be faulted with.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.7670-C of 2014

In view of the order passed in the main appeal, the present application for restraining the respondents from alienating the some specific killa numbers/portion of the suit land, forcibly, illegally or in any manner, during the pendency of the appeal, has become infructuous.

Disposed of as such.

January 18, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**