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

**RSA-5340-2014 (O&M)
Date of decision : 01.02.2016**

Hari Krishan and another

...Appellants

Versus

Daya Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Singla, Advocate
for the appellants.

None for the respondents.

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-12629-C-2014

For the reasons stated in the application which is supported by an affidavit, the delay of 38 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-5340-2014

The appellants are aggrieved of the concurrent finding of fact, whereby the suit for permanent injunction in respect of suit property, not to dispossess from the property in dispute,

being co-sharers, has been dismissed by both the Courts below.

Mr. Amit Singla, learned counsel appearing on behalf of the appellants submits that the suit property was owned by Smt. Sushila Devi and she died in the year 1990. On account of the her death, all the siblings have become co-sharers. In the written statement, the defendants admitted the possession of the appellants-plaintiffs, but not that of a co-sharer but that of a licensee and set up a plea of oral partition that on demise of the parents, the appellants-plaintiffs had been given a share in the property situated at new Rishi Nagar, Hisar. However, no such evidence has been placed on record in support of aforementioned averments. In view of the admission of the defendants, the Courts below ought to have granted the injunction and relegated the party to seek partition and thus, the following substantial questions of law arises for the determination of this Court:

1. Whether a co-sharer, who is in exclusive possession of the property is entitled to injunction and cannot be dispossessed except seeking partition by meets and bounds.
2. That the respondents No.1 and 2 have not placed on record any documentary evidence that any portion of house at new Rishi Nagar, Hissar has been given to the appellants.

3. That both the courts below have not taken into consideration that the house in dispute has never been partitioned whereas the appellants are ready to get the house partitioned in accordance with law.
4. That the possession of appellants upon the house in dispute has been admitted by the respondents No.1 and 2, therefore the appellants cannot be ousted from the house in dispute against the settled principles of law.

There is no representation on behalf of the contested-respondents No.1 to 3 and regarding respondents No.4, 5, 7 and 8, they have already given up by the appellants-plaintiffs, vide order dated 25.08.2015. Accordingly, I proceed to decide the appeal on merits.

I have heard the learned counsel for the appellants and appraised the paper-book.

I am of the view that once the defendants admitted the possession of the appellants-plaintiffs, though the character of the possession may be as licensee, but the fact remains that on the demise of the mother, all the brothers and sisters have become co-sharers as the mother had died. The remedy, if any, for the party is to seek the partition, in case the property has not been partitioned. The respondents-defendants did not lead any evidence in support of aforementioned averments. In view of the

aforementioned admission of the respondents-defendants, viz-a-viz, the possession of the plaintiffs, I am of the view that the plaintiffs cannot be dispossessed except seeking partition by meets and bounds.

Keeping in view the aforementioned facts, the judgment and decree of the Courts below is hereby set aside and the substantial questions of law are answered in favour of the appellants-plaintiffs and against the respondents-defendants. Accordingly, the suit is decreed.

However, it is made clear that the injunction shall remain in vogue only for a period of 4 months and during this period, the appellants-plaintiffs shall move an appropriate petition/application /suit in a competent Court of law seeking partition.

The appeal is allowed in the above-said term.

01.02.2016
yogesh

(AMIT RAWAL)
JUDGE