

**RSA-2908-1988 (O&M) AND  
XOBJC-18-C-2011 (O&M)**

**1**

**305**

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

**RSA-2908-1988 (O&M) AND  
XOBJC-18-C-2011 (O&M)  
Date of decision : 06.12.2018**

Ram Chander and another

... Appellants

Versus

Ram Narain (deceased) through LRs and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. N.C. Kinra, Advocate with  
Mr. Keshav Pratap Singh, Advocate  
for the appellants.

Mr. Rakesh Nehra, Advocate and  
Mr. Rahul Makkar, Advocate  
for the respondents/cross-objectors.

\*\*\*\*

**AMIT RAWAL, J.**

**CM-18109-C-2018**

For the reasons stated in the application, the legal representatives of respondent Nos.1 and 2 i.e. Ram Narain and Dalip Singh are ordered to be brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

**MAIN CASES**

This order of mine shall dispose of one regular second appeal bearing **RSA No.2908 of 1988** titled as **“Ram Chander V/s Ram Narain”** filed at the instance of the appellants-defendants and **XOBJC No.18-C of**

**RSA-2908-1988 (O&M) AND  
XOBJC-18-C-2011 (O&M)**

**2**

**2011**” filed at the instance of the plaintiffs/cross-objectors.

The facts in brief are that prior to filing of the present suit, a pre-emption decree dated 01.10.1959 came to be passed in favour of Bhartu, Chhattar Singh and Daya Kuar. The genesis of the decree was that the other co-sharer one Chand Ram @ Siri Chand son of Ramji Lal had executed a sale deed dated 15.04.1958 in favour of Ghasi and Sartu.

It is a matter record that during the pendency of the aforementioned pre-emption suit, Daya Kaur submitted an application (Ex.P1) for withdrawal of the suit, which was opposed vide Ex.D1 & D2. The total land, which was pre-empted, was three (3) acres. Bhartu instituted the present suit bearing No.499 of 1982 on 17.03.1982 against Chhattar Singh by claiming two fold reliefs; injunction restraint from interference; and in the alternative for possession.

The trial Court on the basis of the evidence brought on record, declined the relief of possession, but granted the injunction qua 1/3<sup>rd</sup> share.

Since both the parties were aggrieved, two appeals were filed before the lower Appellate Court. The lower Appellate Court dismissed the appeal of the appellants-defendants, whereas while accepting the appeal of the plaintiffs, modified the judgment and decree of the trial Court and the injunction granted qua 1/3<sup>rd</sup> share was confined to half share.

Learned counsel appearing on behalf of the appellants-defendants submitted that the suit was not maintainable, in the absence of impleadment of Daya Kaur or her legal representatives. No injunction can be granted against the co-owner, in the absence of exclusive possession. The trial Court rightly declined the relief of possession as the status

**RSA-2908-1988 (O&M) AND  
XOBJC-18-C-2011 (O&M)**

**3**

amongst the decree- holders of pre-emption was of a co-sharer.

Learned counsel appearing on behalf of the respondents-plaintiffs and cross-objectors, in support of cross-objections submitted that no doubt the lower Appellate Court has enjoined the defendants qua half share, but the injunction suit should have been in respect of entire property as the possession of the plaintiff was physical and conscious, thus, in view of the law laid down by the Full Bench of this Court in "Bhartu V/s Ram Sarup", 1981 PLJ 204, if one of the co-sharers is able to establish the exclusive possession, injunction suit should have for entire piece of land.

As regards the appeal, he controverted the arguments of Mr. Kinra, to allege that it is a most innocuous decree based upon the appreciation of the examination of the oral evidence and the remedy to the either of the affected parties is to seek the partition.

I have heard learned counsel for the parties, appraised the paper book.

The passing of the decree dated 01.10.1959 is not in dispute. It would be far fetched to observe that in the absence of any order on the application for withdrawal, decree would be confined amongst two pre-emptors i.e. Chhatar Singh and Bhartu. Once all three pre-emptors are the parties to the decree and therefore, Daya Kaur or her successors, Chhatar and Bhartu, including his successors, would be co-sharer. The trial Court, as noticed above, declined the relief of possession in view of the status of the parties, but granted the injunction qua 1/3<sup>rd</sup> share, which for the sake of of repetition, has been modified to half share. It would be open to the parties to seek partition in the partition proceedings according their share in the

**RSA-2908-1988 (O&M) AND  
XOBJC-18-C-2011 (O&M)**

**4**

competent court of law as the injunction was most innocuous as injunction would only be in existence till partition proceedings culminated into final decree.

The arguments of Mr. Nehra, would not sustain, for, co-sharer cannot be granted relief of possession in the absence of any partition. No evidence has been led on record to establish that till date, any partition has been effected.

In view of what has been noticed above, I do not find any illegality and perversity in the judgments and decrees of the Courts below, particularly the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the appeal as well as the cross-objections are dismissed.

It is made clear that decree is only confined to injunction and not to conferment of any share to either of the parties, which can be determined only in a separate and independent proceedings.

**06.12.2018**  
Yogesh Sharma

**( AMIT RAWAL )  
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**