

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

RSA No.1314 of 1990 (O&M)

Date of decision : 22.02.2018

Balbir Singh and others

...Appellants

Versus

Ganga Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellants.

Ms. Alka Sarin, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for possession claiming superior right of pre-emption with respect to the land measuring 21 kanals 4 marlas which was sold vide sale deed dated 09.08.1983 on the ground that the plaintiff was co-sharer and thus having superior right of pre-emption

The defendants also claimed that they are also co-sharer in the same khewats.

Both the Courts below examined the sale deed placed on the file and copies of the jamabandies.

Both the Courts have recorded a finding that the defendants are proved to be co-sharers in the land comprised in Khewat Nos.38, 39 and 40.

Hence, the suit qua the land comprised in Khewat Nos.38, 39 and 40, was dismissed. However, the Court found that the defendants-appellants are not the co-sharers of the land comprised in Khewat Nos.35, 36 and 37 i.e. land measuring 10 kanals and 4 marlas. The suit was decreed to that extent.

Both the Courts have discussed the evidence and have arrived at findings of fact.

Learned counsel for the appellant has proposed the following substantial questions of law:-

- “1. Whether there is any misreading or non-leading of evidence by the courts below while partly decreeing the suit filed by the plaintiff/respondent?*
- 2. Whether if out of joint khata, a co-sharer sells some of the land mentioning his share and by mentioning khewat and killa number, in that situation vendor becomes co-sharers in the entire land?*
- 3. Whether both the appellants and respondents purchased the piece of land from the joint holding of the same family, both the persons will be deemed to be co-sharers in the entire joint holding?*
- 4. Whether the plaintiff is having superior right of pre-emption when the defendant/appellant is also co-sharers?”*

However, at the time of the arguments, learned counsel for the appellants could not dispute that the defendants-appellants are only proved to be the co-sharers in the land comprised in Khewat Nos.38, 39 and 40 and not in Khewat Nos.35, 36 and 37. Each Khewat is a separate khata. The concept of the co-ownership is in a particular khata. An owner in a different khata/khewat cannot claim that he is co-owner in other khata or khewat.

In view of the aforesaid, the questions of law framed by the

learned counsel for the appellant do not arise for consideration.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Hence, the Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

22.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No