

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

RSA No.3420 of 2016 (O&M)

Date of decision:19.12.2018

Prem Lata ... Appellant
Vs.

Dara Singh and others ... Respondents

RSA No.5228 of 2016 (O&M)

Gian Singh and others ... Appellants
Vs.

Dara Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Yashdeep Jain, Advocate
for the appellant (in RSA No.3420 of 2016).

Mr. Kuldeep Tiwari, Advocate
for the appellants (in RSA No.5228 of 2016).

AMIT RAWAL J. (Oral)

C.M.No.8993-C of 2016 in RSA No.3420 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 42 days in filing the appeal, is condoned.

C.M. stands allowed.

C.M.No.13584-C of 2016 in RSA No.5228 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 22 days in filing the appeal, is condoned.

C.M. stands allowed.

RSA No.3420 and 5228 of 2016 (O&M)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.3420 and 5228 of 2016 filed at the instance of defendant no.7 and respondent No.5 in the Lower Appellate Court against the concurrent findings of facts and law, whereby, they have been enjoined being co-sharers to raise the construction and change the nature of the suit property till the suit property is partitioned.

The short point involved in the present appeals is whether the defendants, who are subsequent vendees/purchasers having purchased the share from the co-sharer, Dara Singh-plaintiff, who had already raised the construction, can be enjoined or not, answer is 'not', for, even if, other co-sharers had raised the construction with no objection from other co-sharers and on subsequent purchase by the appellants, they cannot strike equities at the time when other co-sharer may not have raised objection qua construction but the said objection can always be raised until the suit property is partitioned by metes and bounds.

Despite the pleadings that construction was raised at their own peril. The expression “peril” can be stretched and connected with the change in the nature of the suit property which was one of the relief sought in the plaint.

The aforementioned view of mine is derived from the ratio decidendi culled out by the Full Bench judgment rendered by this Court in

Bhartu vs. Ram Sarup 1981 PLJ 204.

As an upshot of my findings, the findings of facts and law cannot be faulted with. No ground for interference is made out.

The appeals are dismissed.

(AMIT RAWAL)
JUDGE

December 19, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No