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

RSA- 6076-2015 (O&M)
Date of decision: 05.04.2018

Rajinder Kaur (deceased) through legal heir Usha

…..Appellant

versus

Gurbhajan Kaur (deceased) through LRs Upinder Kaur and others

……Respondents

RSA- 2761-2016 (O&M)

S.C.Bhalla

…..Appellant

versus

Smt.Usha and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Karanvir Singh Khehar, Advocate for the appellant in RSA 6076-2015 and for respondent no.1 in RSA 2761-2016
Mr.Ashwani Kumar Chopra, Senior Advocate with Mr.Rajiv Kataria, Advocate and Mr.Akshi Chaudhary, Advocate for the appellant in RSA 2761-2016
Mr.D.P.Singh, Advocate for respondent nos.1, 2 to 21 and 22 in RSA 6076-2015 and for respondent no.2 to 6 in RSA 2761-2016
Ms.Promila Nain, Advocate for respondent no.4 and 5 in RSA 6076-2015
Mr.Arun Jain, Senior Advocate with Mr.Sandeep Dhull, Advocate and Mr.Amit Jain, Advocate for respondent no.15 to 19 in RSA 2761-2016

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh, J.

By this single judgment, I shall dispose of two connected Regular Second Appeal No.6076 of 2015 titled as Rajinder Kaur (deceased) through legal heir Usha vs. Gurbhajan Kaur (deceased) through LRs Upinder Kaur and others and Regular Second Appeal No.2761 of 2016 titled as S.C.Bhalla vs. Smt.Usha and others, arising out of same judgments of the Courts below. Facts of the case are extracted from Regular Second Appeal No.6076 of 2015.

Rajinder Kaur (deceased) now represented through her legal heir Usha had filed a suit for partition of SCO No.40, Sector 7C, Chandigarh, Madhya Marg, UT Chandigarh by metes and bounds by way of auction amongst the co-owners/ share holders and if the auction amongst co-owners/ share holders is not possible then by putting the said property on open auction and the sale proceeded be distributed amongst the co-owners and share holders. Further prayer was made for permanent injunction restraining the defendant nos.3 to 9 from selling/alienating their share and from letting out or parting with the possession, directly or indirectly or creating any kind of charge/ encumbrances on the property in dispute. Further, rendition of accounts was also sought from defendant nos.3 to 9 regarding rent collected by them from the tenants i.e. defendant nos.10 to 14. Further injunction was sought against defendant nos.3 to 9 for restraining them from receiving any rent from defendant nos.10 to 14 and directing defendant nos.10 to 14 to deposit the rent in the Court.

Facts of the case are that plaintiff along with defendant nos.1 and 2 Raj Kulbir Kaur wife of Bhupinder Singh purchased SCO No.40, Sector 7C Chandigarh to the extent of 75% from defendant no.3 namely

Bhupinder Singh vide sale deed dated 26.6.1975. 25% share was transferred in the name of the plaintiff. Another 25% in favour of defendant no.2 and remaining 25% in favour of Rajkulbir Kaur wife of defendant no.3. Rajkulbir Kaur later on sold her share to some other person. At present, share of plaintiff and defendant nos.1 to 9 is as under:-

1.	*Rajinder Kaur (plainitff)*	*25%*
2.	*Gurbhajan Kaur (defendant no.1)*	*12.5%*
3.	*Prabhasharan Singh Sandhu (defendant No.2)*	*12.5%*
4.	*Bhupinder Singh (defendant no.3)*	*1%*
5.	*Ajay Aggarwal (defendant no.4)*	*17%*
6.	*Neelam Aggarwal (defendant no.5)*	*17%*
7.	*Amarnath Singla (defendant no.6)*	*3.75%*
8.	*Laxmi Devi (defendant no.7)*	*3.75%*
9.	*Meena Singla (defendant no.8)*	*3.75%*
10.	*Seema Rani (defendant no.9)*	*3.75%*

It is further claimed that defendant no.10 is tenant in half portion on the ground floor adjacent to SCO No.41, Sector 7C, Chandigarh and said portion was leased out to him @ Rs.1900/- per month. After termination of the tenancy, suit for possession was filed which was ultimately decided by this Court in RSA No.560 of 1992 on 6.4.2005, directing defendant no.10 to vacate the premises within one year from the date of order and also pay future charges @ Rs.5000/- per month. Defendant nos.6 to 9 are in occupation of remaining half portion of SCO in question adjoining SCO No.39. They have now purchased 15% share from the previous owner. Therefore, plaintiff and defendant no.1 and 2 have joint possession of SCO in question. Defendant no.3 is co-owner to the extent of

1% only and receiving entire rent from defendant no.10. He let out the same to other persons without any authority or consent from other co-owners who have major share in the property. Defendant no.3 Bhupinder Singh has also threatened to compromise the matter with defendant no.10. Since plaintiff, defendant no.1 and 2 are co-owners to the extent of 50% jointly, therefore, any such act of defendant no.3 will cause injustice to plaintiff and defendant nos.1 and 2 and multiply litigation.

Defendant nos.1 and 2 in the written statement, did not deny the share as stated in the plaint and stated that besides defendant no.10, remaining portion of the premises in question is in occupation of the other tenants. Defendant nos.6 to 9 were also tenants in the premises which is occupied by them. However, they have occupied much more than their share and are liable to compensate the co-owners to the extent of excess occupation of the premises. It was further stated that defendant no.3 being owner to the extent of 1% share is not entitled to receive the rent or let out any portion or to have any control over the property to the exclusion of the other co-owners. Defendant nos.3 to 9 are liable to render accounts in respect of portion in their occupation and in occupation of other tenants.

Defendant no.3 Bhupinder Singh in his written statement took the stand that plaintiff and defendant no.1 and 2 have not approached the Court with clean hands. Plaintiff was holding 25% share in the premises in dispute. He sold 12 ½% share to third person. Defendant no.2 sold his entire share to Dhanender Kumar. Plaintiff and defendant nos.1 and 2 have applied for No Objection Certificate before Estate Officer, Chandigarh. Suit is liable to be dismissed on the ground of res judicata as the plaintiff and defendant nos.1 and 2 have earlier filed a suit for partition which was dismissed as withdrawn without permission of the Court. Suit is also barred under Order II Rule 2 CPC 1908 and Order VII Rule 11. It was further stated that RSA was filed by M/s H.M. Traders against Bhupinder Singh only. Plaintiff and defendant nos.1 and 2 moved an application to become party which was dismissed. Further objection was taken that the value of the property is more than Rs.ten crore and proper Court fee has not been paid. Shareholding of defendant nos.3 to 9 was admitted. However, share of defendant no.2 was denied stating that he has sold her 12 ½% share. Defendant no.3 further stated that he terminated the tenancy of defendant no.10 by giving notice under Section 106 under Transfer of Property Act, 1882. Thereafter, he filed a Injunction Suit titled as Bhupinder Singh vs. H.M. Traders which was dismissed by Civil Judge, Junior Division, Chandigarh. However, appeal against the said judgment was allowed by the learned Additional District Judge, Chandigarh and defendant no.10 was directed to hand over the physical vacant possession to Bhupinder Singh defendant no.3. RSA no.560 of 1992 was filed by defendant no.10 in which plaintiff and defendant nos.1 and 2 filed an application for their substitution with defendant no.3 but the same was dismissed. Later on, RSA was also dismissed on 6.4.2005 and defendant no.10 was directed to hand over the physical possession to defendant no.3 and also give an undertaking. Defendant no.3 alone has been fighting legal battle against defendant no.10 for the last 25 years and got possession. Defendant no.3 prayed for dismissal of the suit.

Defendant no.4 and 5 in their written statement took the plea that suit is hit by provisions of Chandigarh Sale of Sites and Building Rules, 1960, wherein the partition of property in Chandigarh is prohibited. Actual vacant physical possession of first and second floor including store and cabin under the stairs which was with Aman Preet Singh and Raj Kulbir Kaur was handed over by them to defendant nos.4 and 5. All the co-owners have absolute right over their respective share and can deal with the same the way they like.

It is added here that original plaintiff Rajinder Kaur died during pendency of the suit and Smt.Usha was brought on record on the basis of the Will. It further came out that defendant no.3 Bhupinder Singh sold his share to S.C.Bhalla. S.C. Bhalla was impleaded as defendant no.3(a). Defendant nos.6 to 9 sold their share to defendant nos.15 to 19. Accordingly, they were arrayed as party. Defendant nos.11 to 14 were also arrayed as party on the application of the plaintiff vide order dated 26.9.2007. The amended title of the suit was filed from time to time.

After becoming party, defendant no.3(a) filed written statement while pleading that Bhupinder Singh has fought litigation against H.M.Traders and won the case in RSA, as stated earlier. He stated that SLP against the said order was dismissed. Bhupinder Singh fought litigation for 25 year. He sold his share in the property in question. He was not compensated by other co-owners. Defendant no.3 has sold his 1% share to defendant no.3(a) and hand over the possession to him. Defendant no.3 vacated the possession as per orders of the High Court and handed over the same to defendant no.3. Defendant no.3(a) had inducted Deepak Rai, Santosh Chauhan, I.P. Sharma, Gursharan Singh and Mrs.Sushma Kanwar as tenants in the premises and they were informed about the pendency of the suit.

Defendant no.6 to 9 and 11 in their written statement stated that they have not rented out their portion in their possession to defendant no.11. Defendant no.15 to 19 made statement that they adopt the written statement filed on behalf of defendant no.6 to 9. Defendant no.10 was proceeded against ex-parte.

From the pleadings, following issues were framed:-

1. *Whether the plaintiff is entitled for partition of the suit property by meats and bounds if so, to what percentage/ share? OPP*
2. *Whether the plaintiff is entitlted for relief of permanent injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled for rendition of accounts directing the defendants no.3 to 9 to furnish the accounts of rent collected by them from the tenants? OPP*
4. *Whether the suit is not maintainable? OPD*
5. *Whether the proper Court fee has not been affixed if so, to what effect? OPP*
6. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPP*
7. *Relief.*

Trial Court took up issue no1.1 to 4 and 6 together. Trial Court found that fragmentation is prohibited by law in Chandigarh. It also held that the sale in favour of defendant no.3 is in violation of the order of the High Court dated 8.8.2011 and Bhupinder Singh could not hand over the possession to S.C.Bhalla and S.C.Bhalla could not induct tenants as alleged. Tenancies are in disregard of the order dated 4.4.2006 passed learned Civil Judge (Junior Division), Chandigarh. Regarding defendant no.15 to 19, it was held that they have 15% share and are in possession of the about half portion on the ground floor. Regarding rendition of accounts, the trial Court held that market rate of rent of ground floor portion of the premises is determined as Rs.107 per sq.ft. per month and that plaintiff can only be granted preliminary decree to recover the same. It was found that defendant no.15 to 19 are not maintaining accounts of rent etc. Defendant no.4 and 5 are maintaining accounts of rent collected by them. Therefore, rendition of accounts will be done considering as self occupation of defendant no.3(a) and defendant no.15 to 19 and rendering of accounts of rent by defendant no.4 and 5 etc. Therefore, it was held that plaintiff is entitled to relief of partition of 25% share in the suit property. As fragmentation of sites and building is prohibited in Chandigarh, therefore, property be put to auction as per provisions of Partition Act, 1893. Granting the relief rendition of accounts, all the co-owners were directed to render accounts for passing final decree. Injunction was also granted directing defendant nos.3(a) and defendant no.4 and 5, defendant no.15 to 19 not to create any charge or encumbrance on the suit property. The said issues were accordingly decided. Issue no.5 was decided in favour of the plaintiff and accordingly, preliminary decree for partition of suit property was passed so as to partition 25% share of the plaintiff and further directing for auction of the property as per provisions of the Partition Act 1983, which is to be done at the time of passing of the final decree. Preliminary decree for rendition of accounts was also passed against defendants directing all the co-owners of the suit property to render the accounts. Defendant no.4 and 5 having inducted tenants in the suit property in their possession will submit accounts of rent collected by them and determination of the market rate of the rent of the portion in possession of defendant no.3(a) and defendant nos.15 to 19 will be done in the proceedings for passing of final decree. It was further held that defendant no.3(a) having stepped into the shoes of defendant no.3, defendant no.4 and 5 and defendant no.15 to 19 having stepped into the shoes of defendant no.6 to 9 are restrained from creating any kind of charge or encumbrance on the suit property.

Against the said judgment and decree, two cross appeals were filed. One was filed by defendant no.15 to 19 titled as Kailash Chand Gupta and others v. Rajinder Kaur and others bearing No.850 dated 17.11.2012 and other appeal was filed by S.C.Bhalla bearing No.857 dated 20.11.2012 titled as S.C. Bhalla vs. Usha and others. The two connected appeals were disposed of the learned Additional District Judge, Chandigarh vide judgment dated 14.10.2015, whereby appeal filed by Kailash Chand Gupta and others was allowed and appeal filed by S.C.Bhalla was dismissed. Against the said judgment, plaintiff has filed appeal against the order of the learned Additional District Judge, Chandigarh allowing the appeal of Kailash Chand Gupta and others and S.C.Bhalla has filed appeal against the judgment of learned Additional District Judge, Chandigarh whereby his first appeal was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the record.

Learned counsel for the appellant in RSA No.6076-2015 has vehemently contended that since other shareholders were in possession of share more than their share, therefore, they are liable for rendition of accounts and the judgment passed by the trial Court was correct and the lower appellate Court erred in reversing the findings qua defendant nos.15

to 19. Learned counsel has referred to the authority of Delhi High Court in <u>*Sita Kashyap and another vs. Harbans Kashyap and others*</u>*, 2012(7) RCR (Civil) 3050,* wherein it was held that when one of the co-owners has been deriving some profit by way of rent etc. or is in possession of a portion disproportionate to his share in the property subject matter of the partition, it becomes duty of the Court to adjust the equities by directing appropriate division of profits, if any, earned from the property. Reliance has been placed on the following observations of Delhi High Court:-

> *21. In a suit for partition though there is no specific prayer for awarding profits, the Court has power to direct an enquiry into profits and grant a decree for plaintiff's share therein. This proposition was expressly approved by the Madras High Court in the case of Basavayya (supra). In fact, it becomes the duty of the Court in a suit for partition, to make an enquiry into profits even if there is no claim for profits, so as to balance the equities between the parties. If one of the co-owners has been deriving some profit by way of rent etc. or is in possession of a portion disproportionate to his share in the property subject matter of the partition, it becomes the duty of the Court to adjust the equities by directing appropriate division of profits, if any, earned from the property, which is subject matter of the partition or by directing appropriate payment by a person, who has been occupying a portion larger than he ought to be occupying considering his share in the property, to the sharer(s), who is either totally divested of possession or has been in possession of lesser portion as*

compared to his share in the property. Of course, such payment/adjustment can be directed by the Court only with respect to the mesne profits subsequent to the filing of the suit. Any claim for mesne profits which were earned or could on exercise of due diligence have been earned, before filing of the suit, needs necessarily to be specifically claimed and appropriate court fee needs to be paid on the amount claimed towards share in the mesne profits. But, it would be hyper technical to take a view that merely because the Court did not direct payment of mesne profits either in the preliminary decree or in the final decree, the plaintiff should be deprived of his share in the mesne profits. Of course, no order for such payment/adjustment/apportionment can be passed by the Court once it has become functus officio, in the sense that no proceedings in the main suit are pending before it, but, when the suit proceedings continue to be pending before the Court for one reason or the other, there is no legal impediment in passing such an order even after passing of the final decree. In such cases, the Court is competent to pass a supplementary/additional decree limited to the grant of mesne profits.

Further reliance is placed on the Full Bench authority of Madras High Court in *Babburu Basavayya and others vs. Babburu Guravayya and another, 1951 AIR (Madras) 938.* Relevant extract from the said judgment is as under:-

13. We may now summarise our conclusions. A partition suit in *which a preliminary decree has been passed is still a pending suit & the rights of the parties have to be adjusted as on the date of the final decree: Jadunath v. Parameswar, I.L.R. (1940) 1 Cal. 255. In such a suit the Court has not only to divide the common properties but has also to adjust the equities arising between the parties out of their relation to the common property the property to be divided. The preliminary decree determines the moieties of the respective parties & thereby furnishes the basis upon which the division of the property has to be made. There are other matters in addition to the moieties of the parties that have to be considered & decided before an equitable final partition can be effected. Among them are the realisation of common outstandings, the discharge of common liabilities, the distribution of the profits of the properties realised pending the suit, either in cash or by allotment of property of the requisite value, the grant of owelty, the provision of maintenance to parties entitled thereto, the allotment of lands on which improvements have been effected to the sharer who has improved them, the allotment of alienated lands to the share of the alienor & other similar matters. Even after the passing of the preliminary decree it is open to the Court to give appropriate directions regarding all or any of these matters either suo motu or on the application of the parties. Order 20, Rule 18, Civ. P. C. does not prohibit the Court from issuing such directions after the stage of a preliminary decree. It is open to the Court in order to prevent* *multiplicity of litigation & to do complete justice & effect an equal division of all the common assets & properties among the parties, to direct an enquiry into the profits received or realised by one or some of them during the pendency of the suit and to award the others their proper share of, such profits under its final decree. This enquiry can be ordered either as part of the preliminary decree itself or subsequently as a step towards the passing of the final decree, & in either case the result of the enquiry has to be incorporated in the final decree.*

Further reliance is placed on the authority of Apex Court in *M.L.Subbaraya Setty and others vs. M.L.Nagappa Setty and others, 2002 AIR (SC) 2066,* wherein parties in possession were liable to give accounts for the rents, income, profits and dividends in respect of joint family property to others from 11.7.1940 up to passing of the final decree.

Learned counsel has also referred to the authority in *Subba Reddiar vs. Hazra Bibi, 1973 AIR (Madras) 237*, wherein the Division Bench of Madras High Court held that in suit for partition plaintiff co-sharer will be entitled to, and the Court will have ample jurisdiction to award mesne profits or rendition of accounts of the income of the plaintiff's share of the properties right upto the moment of the delivery of possession.

On the other hand, on behalf of defendant no.15 to 19, it is contended that they had purchased 15% share from Laxmi Devi, Meena Singla and Seema Rani and they were in possession of 15% share in SCO in question and were in possession of the front side of half portion adjoining to SCO No.39 on its ground floor. There was no restraint order qua vendors of defendant nos.15 to 19. Therefore, they have stepped into the shoes of

Laxmi Devi, Meena Singla and Seema Rani and their possession is legal. The lower appellate Court found that defendant nos.15 to 19 Kailash Chand Gupta etc. are owners in possession qua their share and they are not having any rental income so they are not liable to render any account to the other co-owners. It was further noticed that defendant nos.4 and 5 who are owners to the extent of 34% are already rendering accounts collected by them. Consequently, the appeal qua defendant nos.15 to 19 was allowed.

I am of the view that there is no illegality or infirmity in the findings qua 15 to 19. who being co-owners are in self possession and having no income, therefore, the judgment of the lower appellate Court so far as defendant nos.15 to 19 is concerned, has to be upheld. Consequently, the RSA No.6076 of 2015 has to be dismissed. Since, the Regular Second Appeal is dismissed pending miscellaneous application, if any, stands disposed of.

Now, coming to the case qua S.C.Bhalla – defendant no.3(a). It comes out that he was not originally party to the suit. He was arrayed on having purchased the property during pendency of the case.

Learned counsel for S.C.Bhalla has pointed out that in the amended suit, no relief was claimed against defendant no.3(a). He has also pointed out that after amendment of the plaint there was no issue as to whether defendant no.3(a) is also liable to render the accounts. Therefore, it has been argued that at the first instance, in the absence of any prayer against defendant no.3(a), no order could be passed against defendant no.3 (a) for rendition of accounts. Learned counsel for defendant no.3(a) has further argued that in this case both the Courts below have held that transfer in favour of defendant no.3(a) by defendant no.3 is illegal and in violation of the Courts orders. Learned counsel has referred to the application under Order XXXIX Rule 1 and 2 CPC, wherein no prayer was made for restraining defendant no.3 from alienating the property in dispute. Learned counsel has referred to the order of the Court wherein defendant no.3 was restrained from creating any charge. There was no order that defendant no.3 is restrained from alienating the property. It has been contended that there is a difference between creation of charge and sale of the property and therefore, both the Courts below have misread the stay order. Learned counsel has further contended that learned Civil Judge (Junior Division), Chandigarh vide order dated 4.4.2006 granted the following relief:-

> *26. As a result of the above detailed discussions, both the applications are disposed of accordingly. The application for receiver stands dismissed and the application under Order 39 Rule 1 & 2 r/w 151 CPC stands disposed of with the directions to Defendant no.3 and the remaining defendants to keep the proper accounts of the amount so realized by them regarding the property in dispute, like rent etc., and in case, the defendant no.3 lets out the demised premises to anyone after obtaining the possession, he will intimate the Court in advance with complete particulars of fee person and will also intimate such person that he will be bound by the final outcome of the partition proceedings, and defendant no.3 and the other co-owners will not create any kind of charge on the property in dispute so as mat the rights of me parties after partition can be protected.*

The perusal of the aforesaid order shows that defendant no.3

was only restrained from creating charge on the property. There was no order restraining him from alienating the property at all. Therefore, both the Courts below erred in holding that defendant no.3 illegally alienated the property to defendant no.3(a) and is in illegal possession.

I am of the view that there is a marked difference between creation of charge and sale. The order of the learned Civil Judge was not to create any charge but there was no restraint order restraining defendant no.3 from alienating the property in dispute. The result will be that defendant no.3(a) will be stepped into the shoes of defendant no.3. Therefore, sale of his share by defendant No.3 in favour of defendant no.3(a) during pendency of litigation is not illegal.

From the discussion made above, it is also clear that Bhupinder Singh, who was having only 1% share, fought litigation for nearly 25 years against tenant – defendant no.10 M/s H.M. Traders for getting portion in his possession vacated. Naturally, he had to spend a lot of money. The matter was ultimately settled by the High Court and defendant no.10 vacated the portion. The application filed by plaintiff and defendant no.1 and 2 to become party was dismissed. In this way, admittedly, Bhupinder Singh had to spend lot of money on litigation against defendant no.10 H.M.Traders to get his portion vacated and he lawfully got the possession of the said portion. Now saying that since Bhupinder Singh got rent from defendant no.10, therefore, he should render the accounts will be unjust. When Bhupinder Singh was fighting litigation against defendant no.10, plaintiff and defendant nos.1 and 2 did not come forward to share litigation cost nor joined Bhupinder Singh. Bhupinder Singh lawfully sold his 1% share to S.C.Bhalla and delivered the possession thereof. Findings of the lower

Court shows that it was found that after vacation of the property by the tenant, defendant no.3(a) is in self occupation of the property. Learned counsel for S.C.Bhalla has vehemently argued that rights of the co-sharers are well defined. Every co-sharer has a right in every inch of joint land. For this purpose, he has relied upon the authorities in *Tarsem Singh vs. Gurdeep Singh, 2016(1) Civil Court Cases 642 (P&H), Pritpal Singh and others vs. Hari Singh and others, 2017(2) PLR 374, Lekh Ram and others vs. Prabhu Dayal and others.* He has also contended that a co-owner in joint land has a right to sell his share subject to the right of the other co-owners for partition. He has relied upon the authority in *Swaran Singh vs. Bagga Singh, 2008(4) RCR (Civil) 426.*

Learned counsel for defendant no.3(a) –appellant S.C.Bhalla has further argued that since the possession of defendant no.3(a) is legal and not in violation of any restraint order passed by this Court restraining defendant no.3 from selling his share, therefore, it cannot be called illegal possession. Secondly, since now he is in self occupation, he being co-sharer is not getting any profit or illegal gain out of it, therefore, he cannot be directed to render the accounts and further that in the amended plaint no prayer was made against defendant no.3(a) i.e. S.C.Bhalla. Further, the expenses borne by Bhupinder Singh in getting portion vacated from M/s H.M.Traders, cannot be ascertained at this stage and while calculating profits or loss, it will not be possible to determine what profits were gained by Bhupinder Singh by way of rent and what were the expenses in litigation and whether he actually gained anything or spent more than the rent collected by him. Learned counsel for defendant no.3(a) has further stated that he is ready to surrender the possession for which CM was moved.

Courts below assessed the rent @ Rs.107 per square yards on the basis of the rent paid by the tenant under the stairs.

I am of the view that the said rate of rent is unjustified for calculating the mesne profits. It is well known that for a small booth on the front side, rate of rent is much higher, whereas, rate of rent for the bigger portion on front or on the rear portion is much lower.

I am of the view that in this case, keeping in view peculiar circumstances, defendant no.3(a) cannot be asked to render the accounts. He purchased 1% share from Bhupinder Singh who got the possession of portion from M/s H.M.Traders after 25 years long litigation by spending huge money and it is not known as to how much amount was spent by Bhupinder Singh on the litigation and what rent was received by him and whether he got any profit or not. Court order did not restrain Bhupinder Singh from alienating his 1% share. Therefore, purchase by S.C.Bhalla defendant no.3(a) is legal. He is not in illegal possession. He is otherwise co-sharer and it is not shown that he got any illegal profits. At the most he stepped into the shoes of Bhupinder Singh and since the money spent by Bhupinder Singh on the litigation against M/s H.M.Traders is not known and cannot be ascertained at this stage, therefore, it will not be possible to know as to whether he spent more money on litigation than the rent received by him from M/s H.M.Traders and consequently, defendant no.3(a), who has otherwise stepped into shoes of defendant no.3, cannot be asked to render accounts. Therefore, findings of Court below in this regard are perverse and lack proper scrutiny of evidence.

As a result of the foregoing discussion, RSA No.2761 of 2016 filed by S.C.Bhalla is allowed to the extent that judgments and decrees passed by both the Courts below are set aside to the extent whereby S.C.Bhalla has been asked to render the accounts. Judgment and decree qua defendant nos.15 to 19 passed by lower appellate Court is also upheld. Consequently, RSA No.6076 of 2015 is dismissed. Since, the Regular Second Appeal is dismissed, pending miscellaneous application, if any, stands disposed of.

A copy of the order be placed on the connected case file.

05.04.2018 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No