

RSA-1309-2017 (O&M)

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

**RSA-1309-2017 (O&M)
Date of decision : 15.12.2018**

Paramjit Singh

... Appellant

Versus

Karam Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate
for the appellant.

AMIT RAWAL, J.

CM-3126 -C-2017

For the reasons stated in the application, the delay of 108 days in refiling the appeal is condoned.

CM stands disposed of.

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The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondents-plaintiffs claiming exclusive possession in the suit property as well as restraint order against the defendant, who is none-else, but brother, has been decreed and affirmed in appeal.

The plaintiffs instituted the suit on the premise that grandfather of the plaintiff No.1, was the owner and in possession of the suit property since long. Owing to the ill-health, he could not maintain the property and handed over to his son plaintiff No.2, vide agreement to sell dated

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13.09.2012. Plaintiff No.2 also obtained the water connection in his name.

The defendant disputed the exclusive possession of the plaintiffs and stated the agreement to sell to be forged and fabricated document.

Learned counsel for the appellant submitted that the parties to the *lis* are co-sharers and in the absence of partition, no injunction can be granted against a co-sharer.

I am afraid the aforementioned argument is not sustainable as it has been borne out from the judgments and decrees that the defendant in cross-examination admitted the exclusive possession of the respondents-plaintiffs. In view of such situation, the principles culled out by the Full Bench of this Court rendered in "*Bhartu V/s Ram Sarup*", 1981 PLJ 204, had rightly been applied. The injunction is only till the party seeks partition.

There is no bar either of the parties to initiate the partition proceedings to claim the separate possession by metes and bounds.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

15.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**