

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

RSA No.3353 of 2017

Date of Decision.21.05.2018

Sarbati and others

...Appellants

Vs

Dharampal and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Kathuria, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are aggrieved of the dismissal of the suit claiming declaration and permanent injunction challenging the sale deed dated 20.11.2012 to be declared as illegal, null and void and not binding upon the rights of the plaintiffs with further prayer for permanent injunction restraining the defendants from alienating the land measuring 50 sq. yards out of 150 sq. yards situated at Hari Nagar, Line Par, Bahadurgarh, District Jhajjar.

The appellants-plaintiffs instituted the aforementioned suit on the premise that Suraj Bhan husband of plaintiff No.1 and father of plaintiffs No.2 and 3 had purchased a plot measuring 150 sq. yards. A sale deed dated 06.05.1974 was executed in favour of three persons viz; Suraj Bhan and his brothers namely Dharampal and Om Parkash whereas Suraj Bhan was owner of the plot in dispute as he had paid the total sale consideration as per the writing dated 6.12.2011. Suraj Bhan expired on 01.02.2010. After his death, plaintiffs being the legal heirs of Suraj Bhan became absolute owners of the above said plot but the defendants had sold a portion

measuring 50 sq. yards shown by letters DEFG in the site plan out of the plot measuring 150 sq. yards vide sale deed dated 20.11.2012 in which he had no right to do so.

The aforementioned suit was contested by the defendants by raising preliminary objections qua maintainability and it was stated that ownership of the property in dispute was not of Suraj Bhan alone but Suraj Bhan, Dharampal and Om Parkash were owners in possession in equal shares. The sale effected by Dharmapal was qua his share only.

The trial Court on preponderance of evidence dismissed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

Mr. M.S. Kathuria, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, for, the Courts below cannot adopt pick and chose method, for, in the absence of the partition of the suit property, the sale deed could not be effected to 50 sq. yards, therefore, there is gross illegality and perversity. The suit was filed on 04.03.2013 immediately on acquiring the knowledge of the aforementioned sale deed and injunction in this regard was sought. The Courts below have not appreciated the aforementioned fact, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellants and appraised the paper book. Concededly, the suit property is not found in exclusive possession of Suraj Bhan but had been in the ownership

of Suraj Bhan, Dharampal and Om Parkash. There would have been force and merit in the submissions of the appellants, had the sale been beyond the share of Dharampal. On acquiring the ownership of the share, the subsequent vendee becomes the cosharer. The remedy amongst the co-sharers who do not want to keep the property joint is to seek separate possession by partition, thus, the suit for declaration and injunction in this manner was not maintainable and rightly so, both the Courts below dismissed the same.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees under challenge as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No