

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

RSA No.756 of 2016 (O&M)

Date of decision:30.01.2019

Wazir Chand

... Appellant(s)

Vs.

Sheela Rani

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Punchhi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Short point involved in the present Regular Second Appeal is whether the judgment and decree of the Lower Appellate Court while reversing the judgment and decree of the trial Court which dismissed the suit of the plaintiff alleging the parties to the lis being co-sharers, injunction could have been granted in respect of un-partitioned land measuring 9 marlas, or not.

The respondent-plaintiff sought the injunction from forcible interference against the appellant-defendant on the premise that she was owner in possession of the land measuring 9 marlas whereas defendant of 1 kanal 2 marlas. The defendant objected to the maintainability of the suit but did not deny the ownership of specific khasra.

Mr. Sandeep Punchhi, learned counsel appearing on behalf of the appellant-defendant submitted that in the absence of non-impleadment of owner, who is none-else but wife of the appellant, the suit was liable to

be dismissed.

I am afraid the judgment and decree of the Lower Appellate Court cannot be said to be faulted with, for, as per the admission of the appellant-defendant, both the parties to the lis have constructed their house and living therein which itself was a clincher for the Court below to form an opinion that they have been in exclusive possession.

The law with regard to granting the injunction against a co-sharer in case of exclusive possession is no longer res integra in view of the ratio decidendi culled out by the Full Bench of this Court in **Bhartu Vs. Ram Sarup 1981 PLJ 204**. The best remedy for the appellant-defendant is to seek partition in accordance with law. The aforesaid question is answered in the above manner.

No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No