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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-308-2017 (O&M)

Date of decision : 19.03.2019

Bachan Singh (deceased) through LRs and others

... Appellants

Versus

Birbal (deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

Mr. R.S. Chahuan, learned counsel appearing on behalf of the appellants submitted that the plaintiffs had sought the injunction against the co-sharer for raising construction, till finalization of the partition proceedings. The trial Court decreed the suit, but the lower Appellate Court, in appeal, reversed the findings of the trial Court. The matter is already pending before the Financial Commissioner and there is interim stay.

Keeping in view the aforementioned facts, I am of the view that once the parties have initiated steps for partition, pendency of the injunction suit as well as the appeal would be a farcical exercise, having availed the aforesaid remedy. The lower Appellate Court has reversed the findings of the trial Court by relaying upon the *ratio decidendi* culled out by the Full Bench of this Court in **Bhartu Versus Ram Sarup, 1981 PLJ 204** and

Division Bench in *Bachan Singh Versus Swaran Singh, 2000 (3) RCR (Civil) 70.*

The aforesaid findings of the lower Appellate Court cannot be said to be suffering from illegality and perversity, particularly when the matter is already pending before the revenue court. No ground is made out for interference. Accordingly, the present regular second appeal is dismissed.

However, the parties shall be bound by the findings rendered by the Revenue Court.

19.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**