

In the High Court of Punjab and Haryana at Chandigarh

**RSA-5396 of 2018 (O&M)
Date of Decision:6.1.2020**

Bhajan Singh

---Appellant

versus

Jaswant Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Arora, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration and permanent injunction filed by the appellant-plaintiff was dismissed by the trial court vide judgment and decree dated 27.7.2015 that came to be affirmed in appeal by the Additional District Judge, Sri Mukatsar Sahib vide judgment and decree dated 6.11.2017.

Indisputably, land measuring 8 marlas was owned by Sucha Singh, father-in-law of Jaswant Kaur defendant No. 1 and out of that land, Gurcharan Singh father of the plaintiff-appellant purchased three marlas and one sarsahi vide sale deed bearing No. 4571 dated 1.2.1964. Till date, there is no partition of joint land between the co-sharers. Plea of the appellant-plaintiff is that his father Gurcharan Singh purchased three marlas and one sarsahi by way of specific dimensions and boundaries and as such, is entitle

to be declared as exclusive owner of area purchased through the aforesaid sale deed. He has also pressed into service ex parte ejectment order passed in favour of Gurcharan Singh and against Sh. Joginder Singh which has not been executed till date. Both the courts have consistently held that since the plaintiff-appellant has become co-owner/co-sharer in total land measuring 8 marlas, he may seek recourse to appropriate remedy in law for partition of joint property and possession of area that falls in his share. The Appellate Court has also held that plaintiff failed to adduce sufficient much less cogent evidence to prove that house existing on the joint land was constructed by Gurcharan Singh or plaintiff Bhajan Singh.

Counsel for the appellant has failed to point out any materials on record to prove that land measuring 8 marlas previously owned by Sh. Sucha Singh was ever partitioned between Gurcharan Singh and Sucha Singh or his successors in interest. He further failed to advance any convincing arguments that the house in question was constructed by Sh. Gurcharan Singh after purchase of three marlas and one sarsahi out of 8 marlas. There cannot be dispute about settled position in law that purchase of land out of joint khata even by way of specific dimensions and boundaries would not bestow any better right upon the party than his vendor has. In other words, a vendee of a share out of joint land would only become a co-sharer with other co-owners of the joint land. In this context, reference can be made to judgment of Full Bench of this Court **Bhartu vs. Ram Sarup** 1981 PLJ 204. In this view of the matter, I do not find an error much less perversity in concurrent findings recorded by the courts that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and

is accordingly dismissed in limine. However, nothing stated hereinbefore shall prejudice right of the appellant to seek partition of the joint land in appropriate proceedings. As the appeal has been decided on merits, application for condonation of delay in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

6.1.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No