

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-329 of 2013(O&M)
Date of decision: 25.07.2022

Nachhattar Singh (since deceased) through his LRs

..Appellant

Versus

Rajwinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate
for the appellant.

Mr. Shivender Pal, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendant no.1 assails the concurrent findings of fact arrived at by the Courts below while decreeing the suit filed by the plaintiffs for possession of the property purchased by them through two sale deeds executed by the exclusive owner late Smt. Bachan Kaur widow of Sh. Kangan Singh. In a previous suit, inter-se between the parties, the plaintiffs have been declared owners of the property and the claim of the appellant based upon an agreement to sell executed by late Smt. Bachan Kaur, was dismissed.

The learned counsel representing the appellant submits that late Smt. Bachan Kaur transferred 1/8th share of the khewat. Hence, he submits that the plaintiff would become co-owner of the property. He further submits that subsequently, by a transfer deed, late Smt. Bachan Kaur has transferred the remaining share to the appellant and therefore, the appellant

has become co-owner. He further submits that in a previous suit filed by late Smt. Bachan Kaur, the plaintiff, who was defendant therein, did not file the counter claim. Hence, the suit for possession is not maintainable.

This Court has considered the submissions made by the learned counsel representing the appellant, however, find no substance therein.

The argument of the learned counsel representing the appellant is fallacious. The sole owner can sell some part of its property by identifying the land by khasra numbers. The purchaser and his vendor do not become co-sharer in the joint khewat. A sale owner can segregate the share which he intends to sell. Thus, the argument of the learned counsel that the plaintiff became co-owner is, fundamentally, wrong.

As regards the last argument of the learned counsel representing the appellant, the counter claim is deemed to be a suit and it has to be tried separately. It is allowed to be filed in the same suit only to avoid delay. However, failure to file counter claim in response to the previous suit cannot operate as constructive resjudicata, particularly when the defendant is not entitled to pray for decree of possession.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

July 25th, 2022

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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>