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149 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision :26.04.2024

1. **RSA-1891-1991(O&M)**

Rajinder Singh **...Petitioner**

Vs.

Suraj Bhan and another ...Respondents

2. **RSA-1895-1991(O&M)**

Rajinder Singh **...Petitioner**

Vs.

Chander Bhan and another ...Respondents

3. RSA-1233-1994(O&M)

Dharam Singh **...Petitioner**

Vs.

Rajinder Singh and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate
for the appellant (in RSA-1891-1991 & RSA-1895-1991).

Mr. Jai Vir Yadav, Sr. Advocate with
Ms. Parul, Advocate
for the appellant (in RSA-1233-1994) and
for the respondents (in RSA-1891-1991 & RSA-1895-1991).

ANIL KSHETARPAL, J. (Oral)

1. The bunch of three connected regular second appeals has come up for disposal.

2. In RSA No. 1891 and 1895 of 1991, Sh. Rajinder Singh (plaintiff)

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is the appellant. In RSA No. 1233 of 1994, the same Sh. Rajinder Singh is respondent No.1, the contesting respondent. Though, Sh. Rajinder Singh is not represented in RSA No. 1233 of 1994, however, the issue that arises for consideration is common. Sh. Rajinder Singh filed three appeals. Two appeals were dismissed on 22.7.1991, whereas, the third appeal was allowed on 09.04.1994. Hence, the interest of Sh. Rajinder Singh, can be protected by the appellant (who is appellant in RSA No.1891 and 1895 of 1991). Sh. Rajinder Singh filed three suits for possession by way of pre-emption on the ground that he has a superior right to pre-empt the sale deeds executed by co-sharers Smt. Subhadra. All the three suits were dismissed because it was found that the objections against naksha 'be' were finalized on 16.01.1991, i.e. before the date of trial Court's judgments and decrees in all the three suits.

3. In two first appeals, the Courts below concluded that Sh. Rajinder Singh was no longer a co-sharer on the date of judgment and decree passed by the trial Court. Hence, the suit cannot be decreed. However, in the third appeal, the Court held that in absence of the instrument of partition, the status of the co-sharers continues till the date notified in the instrument of partition.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. Learned counsel representing the appellant-Sh. Rajinder Singh contends that the status of the co-sharers will get severed on the day notified in the instrument of partition. He submits that the defendants have failed to produce the instrument of partition. On the other hand, learned Senior counsel

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representing the vendees submits that in view of the recent judgment passed in ‘Jhabbar Singh (deceased) through legal heirs & others vs. Jagtar Sikkh s/o Darshan Singh Singh’ 2023(3)ICC 716, the status of the co-sharer will get severed on the day naksha ‘be’ is confirmed and sanctioned. He submits that in all these three cases, naksha ‘be’ was affirmed and sanctioned on 16.01.1991, whereas, the judgment of the trial Court was passed on 27.02.1991.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. The Hon'ble Supreme Court in *Jhabbar Singh’s case (Supra)* has laid down that the moment naksha ‘be’ is sanctioned the status of the parties as co-sharers comes to an end and it has no relation whatsoever to the date notified in the ‘Instrument of Partition’ as it is just a ministerial work, i.e. it has no relation to significant decisions making.

8. The judgment of the Division Bench of this Court in *‘Pritam Singh vs. Jaskaur Singh’*, has been reversed. The judgment passed by the Supreme Court is binding under Article 141 of the Constitution of India. Hence, the RSA No. 1891 and 1895 of 1991 shall stand dismissed, whereas, RSA No. 1233 of 1994 shall stand allowed.

(ANIL KSHETARPAL)
JUDGE

26.04.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No