

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.3049 of 2014.
Decided on:-6.5.2015.

Kumari Reena and anotherPetitioners.

Versus

Smt. Kamlesh and anotherRespondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ashwani Gaur, Advocate
for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

Defendants No.1 and 2 in a suit for possession by way of partition with consequential relief of permanent injunction, had made an application under Section 4 of the Partition Act, 1893 (hereinafter mentioned as the Act) for purchasing share of the plaintiff. Considering the entire spectrum of facts and circumstances, allowing the application of the defendants, they were called upon to pay the price of the share of the plaintiff at the prevailing market rate.

2. The defendants, petitioners herein, are aggrieved of the said order of 2.4.2014 (Annexure P-3) of the lower court and claim that instead of prevailing market price, they are ready to pay the price of the share of the

plaintiff as is mentioned in sale deed dated 19.5.2007.

3. This plea of the defendants, petitioners herein, is contested by the counsel for respondent No.1 urging that the sale deed is of 2007 whereas the defendants have come forward to purchase the share of the plaintiff only recently i.e. after passage of considerable length of time.

4. Hearing has been provided.

5. The lower court has very deftly considered the factual matrix of the case and has come to a considered conclusion and rightly so that considerable time had passed away and rates of the property have also increased. Sequel, the defendants were allowed to purchase share of the plaintiff only at the prevailing market price.

6. Contention of learned counsel for the defendants, petitioners herein, is that the court could not have asked the defendants to pay the sale consideration more than what was mentioned in the impugned sale deed. This plea is devoid of any merit.

7. At this stage, it would be necessary to refer to Section 4 of the Act which is reproduced as below:

“4. Partition suit by transferee of share in dwelling-house.
— (1) *Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.*

(2) If in any case described in sub-section (1) two or more

members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.” (emphasis by underlining has been added).

8. Section 4 (1) of the Act clearly envisages discretion of the court in such matter and it is neither necessary nor warranted that the intending purchaser i.e. the defendant should thwart right, title or interest of the plaintiff on the property just on the rate at which the plaintiff purchased the same many years ago.

9. In view of these circumstances, the impugned order passed by the lower court does not suffer from any factual or legal infirmity. Sequel, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

10. Interim stay is vacated. The lower court be informed.

May 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes