

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3402 of 2009(O&M)
Date of Decision: 22.07.2015

Sikander Singh

... Appellant

Versus

Zora Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Tarundeep Kumar, Advocate,
for the appellant.

Mr. DS Gurna, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is defendant's second appeal. The plaintiff's suit failed before the trial court which judgment and decree was reversed by the learned Additional District Judge, Ludhiana. The suit was decreed. The defendant's case in defence of the suit was based on a family partition claiming that the entire suit property had come to his exclusive share. On the other hand, the plaintiff based his case on the strength of the *jamabandi* for the year 2001-2002 (Ex. P-2) to submit that he was 1/3rd owner of the suit property. The dispute revolved around the validity of the agreements of family partition dated 20.7.1998, and the other dated 14.12.2003 (Ex.D-2) as well as the Panchayat Razinama dated 5.1.2006 (Ex.D-3). The rights of the parties revolved around these documents and their effect on the rights of the parties. The learned Additional District Judge, Ludhiana, has in Para. 10 reasoned out the case as follows:-

“After considering the rival contentions of the learned

counsel for the parties and the law relied upon by them, I am of the view that the appellant claims his 1/ 3rd share in the suit property on the basis of the jamabandi for the year 2001-2002, which is Ex.P.2 on the file. Perusal of the jamabandi shows that Zora Singh appellant is owner in joint possession in the suit property. On the other hand, the respondent claims that he has become the owner of the entire suit property through agreement of family partition dated 20.7.1998, family partition dated 14.12.2003 Ex.D.2 and Panchayat Razinama dated 5.1.2006 Ex.D.3. The documents Ex.D.1, Ex.D.2 and Ex.D.3 are very relevant documents to decide the right of the parties whether through these documents the appellants has relinquished his right legally and the respondent has become owner of the property or the appellant is still owner in possession of 1/3rd share in the suit property. The agreement dated 20.7.1998 Ex.D.1 is very much relevant. The relevant portion of Ex.D.1 reads as under:-

"Today with our free consent the land bearing Khasra no.108 in village phagalian, the entire property is given to Sikander Singh and Sikander Singh became owner in possession of this property from today.

Upon plain reading of the above lines, it is concluded that the rights of the parties to their respective shares were created for the first time on 20.7.1998. It was neither re-affirmation of the existing rights nor it established the partitioned rights at any point of time prior to the execution of the document Ex.D.1. As such, I am of the view that document Ex.D.1 is hit by provisions of Section 17 of the Indian Registration Act and it does not create any right or title in favour of the respondent. Similarly, Ex.D.2 and Ex.D.3 family partition and Panchayati Razinama, which were also written on the same date without any pre-existing rights and these are also hit by provisions of Section 17 of the Indian Registration Act. Moreover, the jamabandi on the file Ex.P.2 proves that the appellant is owner of 1/3rd share in the suit property. In view of the totality of the circumstances, the findings of issues no.1 and 2 recorded by the trial court are erroneous under law and as such reversed. The appellant is entitled for separate possession of 1/ 3rd

share in the suit property.”

Having regard to the line of reasoning I find no cogent ground to disagree with the findings of the court of first appeal taken after appreciating the documents Ex.D-1, D-2 and D-3 relied upon by the defendant, the appellant in this appeal, which did not confer any title or credit worthy evidence when unregistered and hit by Section 17 of the Indian Registration Act, 1908. The original appeal court has held the plaintiff entitled to 2/3rd share of the suit property, whereas the defendant has a 1/3rd share in the suit property. This is because he purchased 1/3rd share from one of his brothers by a sale deed for valuable consideration. It may be noted that the defendant did not lay claim on the basis of family settlement. This is misreading of the document relied upon. To the contrary, the alleged family settlement is in fact a partition deed. In this factual position, no question of law arises for decision in this appeal and much less any substantial question of law.

For the reasons recorded by learned lower appellate court, this appeal is dismissed by affirming those findings as fair and proper and duly arrived at on appreciation of the evidence on record. There are found no errors of fact or law.

22.07.2015
monika

(RAJIV NARAIN RAINA)
JUDGE