IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No.490 of 2011 (O&M)
Date of Decision: February 06, 2015.

Dr. Ashok Kumar Goel

.....APPELLANT(s).

VERSUS

Deep Chand and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bhag Singh, Advocate
for the appellant (s).

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SURINDER GUPTA, J.(Oral)

The appellant-plaintiff has challenged the judgment and decree dated 10.01.1996 suffered by his father Dharam Vir Goyal, respondent No.5 in case titled as "Arya Mitter Vs. Dharam Vir Goyal" civil suit No.1037 dated 02.11.1995 on the ground that property i.e. house No.4298-4299, Punjabi Mohalla, Ambala Cantt. was a joint Hindu family coparcenary property in the hands of Dharam Vir Goyal as *Karta* and he was not competent to suffer the decree.

Learned counsel for the appellant-plaintiff has argued that Parasana Mal father of Dharam Vir Goyal was recorded in Cantonment record as holder of occupancy rights of the suit property. After his death, these rights devolved on Dharam Vir Goyal, as such, he was not competent to alienate this property in favour of his other son Arya Mitter.

The argument of learned counsel for the appellant has no merits because no evidence was produced as to how the occupancy rights of the suit property had devolved on Dharam Vir Goyal. In the absence of any

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evidence, the presumption of devolution of occupancy rights by natural succession cannot be drawn.

As per observations of lower court, this suit appears to have been filed by plaintiff in connivance with his father and brother just to harm the subsequent vendees. In para 13 of the judgment, learned Civil Judge (Junior Division), Ambala has observed as follows:-

> "13. The most important fact in the present case is that the defendants no.4 and 5 were proceeded against ex parte but they appeared as plaintiff's witnesses as PW2 and PW3 respectively. This shows that plaintiff and defendants no.4 and 5 are acting in connivance with each other and plaintiff is not coming to the court with clean hands. Further, plaintiff has admitted in his cross-examination that he was aware of the construction going on in the suit property but he had not filed any suit for permanent injunction. He further admitted that he and defendants no.4 and 5 were residing together till 1999. Even at present, defendants no.4 and 5 are residing together, as stated in the plaint itself. The transactions in question are of the year 1996. In view of all these circumstances, it cannot be reasonably presumed that plaintiff was not in the knowledge of decree and subsequent sale deeds."

On perusal of paper book and judgments of both the Courts below, I find no legal or factual infirmity therein.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

February 06, 2015.
Sachin M.