

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.M. NO.12953 C OF 2013 &

R.S.A. NO.4815 OF 2013

DATE OF DECISION: NOVEMBER 05, 2015

Deepti

.....Appellant

VERSUS

Vipin Kumar and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

Present: Mr. N. C. Kinra, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgement and decree dated 11.05.2012 passed by the Civil Judge (Junior Division), Panchkula, by which suit for declaration, to the effect that the appellant-plaintiff is owner in joint possession of Booth No.81, Sector 25, Panchkula, as a consequential relief of permanent injunction, restraining defendant No.1- Vipin Kumar son of Har Kishan Mohan from alienating the suit property or to create any charge thereupon, stands dismissed and the appeal before the District Judge, Panchkula has also been dismissed on 01.08.2013.

It is the contention of learned counsel for the appellant that the Courts below have not properly appreciated the evidence which has been brought on record. He asserts that as per the affidavit dated 07.12.2005,

Ex.P15, respondent-defendant No.1, Vipin Kumar, who was the husband of the appellant-plaintiff prior to her divorce, had executed the said affidavit, wherein he had stated that on his death the appellant-plaintiff would be the sole owner of the property and no one else will have any right over the same. This clearly indicates that the property was owned jointly by the appellant-plaintiff and respondent-defendant No.1. This also further fortifies her claim that she had contributed towards purchase of the said Booth No.81, Sector 25, Panchkula, which is the subject matter of the suit. Assertion has also been made that there was a compromise, Ex.P-25, which also indicates that the appellant-plaintiff and respondent-defendant No.1 were the joint owners of the property. He, thus, contends that the impugned judgements and decree deserves to be set-aside and the suit of the appellant-plaintiff decreed.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements.

A perusal of the judgements passed by the Courts below would clearly indicate that the pleadings and the evidence, which have been brought on record have been properly appreciated by the courts. In fact, at this stage quoting Para 14 of the Appellate Court judgement would make the things clear, which reads as under:-

“As far as reliance on affidavit of defendant No.1, copy of which is Ex.P15, is concerned, it is also of no avail for appellant-plaintiff as a perusal of this document shows that in this affidavit also, the respondent-defendant No.1 alleged that he is the sole allottee of the booth in question and the said

affidavit is in the form of Will of defendant No.1, wherein, the defendant No.1 alleged that after his death, this booth will be inherited by the plaintiff but it is admitted fact that the defendant No.1 is still alive, as such, this affidavit cannot be served any purpose till the life of defendant No.1 and even thereafter, it is required to be proved as a will as per the requirement of the law to take any benefit of the Will by the plaintiff. Even in the alleged compromise copy of which is Ex.P-25, it is no where mentioned that the suit property was jointly owned by the parties. As such, the fact remains that there is no cogent evidence on record to prove that the plaintiff was the joint allottee of the booth in question or she contributed towards the sale price. On the contrary, the suit property was exclusively owned by defendant No.1, who had already sold it and no more owner of the same. Not only this, during the course of arguments, a plea was put forward by the learned counsel for the appellant that she is claiming the booth just to seek claim of maintenance from the defendant, who has not paid anything to her even after the divorce between the parties but no order of any competent court showing that a decree of maintenance has been passed against the defendant No.1, has been placed on record and if it is so the appellant-plaintiff cannot stake any claim over the suit property in order to secure the rights of recovery of maintenance. Then there is no evidence to show that either in the divorce petition or even thereafter, the plaintiff wife has filed any suit to claim

maintenance from the respondent. No doubt an interim maintenance of Rs.5,000/- was granted to the plaintiff during the pendency of the divorce petition but in the judgment there is no order as to permanent alimony to the plaintiff-wife as such on this ground also, the plaintiff-wife has no right to claim any right over the suit property.”

In view of the above, this Court does not find any illegality or irregularity on the part of the Courts below, which would call for any interference in the well considered impugned judgements.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.12953 C of 2013, seeking restraining the respondents from changing the nature of alienating the property in dispute is also dismissed.

November 05, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE