

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

RSA No.1683 of 2015 (O&M)

Date of Decision: December 10, 2015

Amrik Singh

.... Appellant

vs.

Parminster Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Tarunveer Vashist, Advocate for the appellant.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 21.10.2014 passed by learned Addl. District Judge, Sangrur, modifying the judgment and decree dated 08.02.2011 passed by learned Civil judge (Sr. Divn.), Sangrur, vide which the suit of the plaintiff for declaration and permanent injunction was dismissed.

The suit filed by the plaintiff against his four brothers for declaration and permanent injunction was dismissed by the lower court. The plaintiff had claimed that he was owner of the disputed house. The disputed house was previously owned by Harchand Singh @ Chand Singh, father of the parties. After his death, it was inherited by the plaintiff, defendants and their mother Mukhtiar Kaur in equal shares to the extent of 1/6th share each. The plaintiff had

claimed that vide affidavit dated 17.08.2004 (Ex.P2), duly thumb marked by his mother Mukhtiar Kaur, her mother had given her share (darwaja/house) to him. Remaining defendants had sold their share to the plaintiff. Therefore, he has become exclusive owner of the disputed house.

The lower court has held that the said affidavit does not amount to a Will and on the basis of the affidavit, the ownership of any immovable property cannot be transferred. Accordingly, the suit was dismissed. The first appellate court partly decreed the suit for declaration to the effect that the plaintiff is exclusive owner in possession of the disputed house except the portion called "darwaja" and he is having 1/5th share in the said partition and the defendants are restrained from interfering in the peaceful possession of the plaintiff over the disputed house except the portion called "darwaja", which is owned and possessed by the parties as co-sharers equally.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Learned counsel for the appellant has argued that no appeal has been filed by the defendants. In spite that the first appellate court reversed the findings on issue No.3 recorded by the lower court, which could not be done.

I am of the view that once appeal is filed by the plaintiff, the first appellate court, after recording the findings of facts, could examine the record and records its own findings.

It was found by the lower court that the mother could not transfer her share in the name of the plaintiff by way of personal affidavit as it is not a document of title. Therefore, the share of the mother will go to all the five sons equally. The legal position is that once the parties are co-sharers in a particular portion, no injunction can be granted against the co-sharers. The mother was stated to be owner of the portion of the disputed house, which was called “darwaja”. Therefore, all the brothers were rightly held to be the co-owners of the portion “darwaja” and the injunction was rightly declined.

Thus, there is no ground to interfere in the impugned judgment and decree. Hence, the present regular second appeal stands dismissed.

December 10, 2015
sarita

(KULDIP SINGH)
JUDGE