

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2906 of 2015(O&M)
Date of decision : September 28, 2015

Jagjit Kaur and another

..... Appellants
Versus

Navninderjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Parvinder Singh, Advocate
for the appellants.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).

The challenge in the present appeal is to the concurrent finding of fact whereby the suit, of the appellants-plaintiffs seeking declaration and permanent injunction that they are owner in possession of the plot measuring 100 sq.yards bearing form No.22041 belonging to oustee category after the death of Avtar Singh son of Kirpal Singh, with a further challenge to the aforementioned form issued in favour of defendant No.1, being illegal null and void has been dismissed.

Mr. Parvinder Singh, learned counsel for the appellants-plaintiffs submits that Avtar Singh executed a Will dated

15.6.2004 Ex.P-1 in his favour, but unfortunately he died on 30.1.2005. After his death the other property except the plot measuring 100 sq.yards was got transferred immediately. On acquiring the status of allotment of plot vide Ex.D-6 in favour of defendant No.1 on 18.12.2008 the appellants-plaintiffs wrote a letter dated 30.11.2009 to the Regulatory Body-GMADA and vide letter dated 1.1.2010 GMADA responded, that the plot had been transferred in favour of defendant No.1. Accordingly, suit aforementioned in the year 2010, was filed.

He further submits that the defendant in his favour had set up a Will dated 5.2.2002 of Avtar Singh along with an agreement to sell dated 4.2.2002 and General Power of Attorney of even date. The said documents could not have been said to be as per provisions of Section 202 of the Indian Contract Act, 1872, therefore, both the courts below have committed illegality and perversity. He further submits, that as per the agreement dated 4.2.2002 defendant No.1 was to file a suit of specific performance since the appellant-defendant has already sought decree, nothing prevented them to file a counter claim.

I have heard learned counsel for the appellants and appraised the paper book.

The execution of three documents i.e. Will dated 5.2.2002, General Power of Attorney dated 4.2.2002 and agreement to sell dated 4.2.2002 clearly proves irrevocable sale in favour of defendant No.1. Section 202 of the Indian Contract Act, 1872 recognizes such type of sales. The plaintiffs could have immediately

sought a transfer of this property by moving caveat, to the GMADA on the death of Avtar Singh, as has been done out in respect of other properties. Avtar Singh could not have Willed away the plot in question in 2004 because he had already bequeathed the said plot vide Will dated 5.2.2002.

The agreement to sell also reflects the receipt of money which has been duly signed by Avtar Singh. Signatures of Avtar Singh had not been disputed nor had been disproved by the appellants-plaintiffs.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 28 , 2015
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