

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

RSA No.3436 of 2015
Date of decision : 16.11.2015

Daya Chand

...Appellant

Versus

Smt. Brahma and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. R.S. Panghal, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact, whereby suit for declaration and injunction seeking setting aside the sale deed dated 06.12.2005 allegedly executed by defendant Nos.1 and 2 in favour of defendant No.3, has been dismissed.

Mr. R.S. Panghal, learned counsel appearing on behalf of appellant submits, that Chhotu Ram was the owner of piece of land and on his death, the property had fallen to the share of the plaintiff and defendant Nos.1 and 2-respondents in equal share. However, vide sale deed dated 06.12.2005, the entire property has been sold, which is beyond the share.

Since the property was situated in lal dora, therefore there was no proof of revenue record, except to suffer a oral statement. The respondents-defendants have not been able to setup the plea of partition in respect of three houses and thus there is illegality and perversity.

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

Admittedly, there were three houses owned by Chhotu Ram. Two are situated in Lal Dora and one is situated outside the Lal Dora. The partition in respect of all the three houses has taken place. The real brother & sister of plaintiff-proforma defendant Nos.4 to 7 did not support the case of the plaintiff nor stepped into the witness-box or favoured the contention of the plaintiff. This goes to show that Bani Singh son of Chotu Ram, brother of the plaintiff was in fact the owner in possession of the disputed property. Even in the lal dora, whenever property was exchanged, rapat roznamcha is always prepared in order to authenticate the alleged transfer or ownership. No such evidence has been placed on record, in essence, the appellant-plaintiff was to stand in his own legs, but failed to discharge the onus, much less, did not discharge onus as per Section 101 of the Indian Evidence Act.

Both the Courts below on the basis of oral and documentary evidence found that the plaintiffs have miserably failed to prove the ownership in respect of the entire property allegedly sold vide sale deed dated 06.12.2005. The plaintiff has rather admitted in cross-examination that he is used to reside in other residential house situated in lal dora of village.

The plaintiff was required to establish right in the property alleged to have been sold vide sale deed dated 06.12.2005. In the absence of the same, both the Courts below rightly did not grant declaration, much less, injunction.

I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial question of law arises for determination.

Appeal is accordingly dismissed.

16.11.2015

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**(AMIT RAWAL)
JUDGE**