

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

101

**RSA No.504 of 2014(O & M)
Date of Decision:04.11.2015**

Ved Parkash

....appellant

Versus

Manjit Kaur and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 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.Ranjit Saini, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court, vide judgment and decree dated 01.10.2010. As even the appeal preferred against the said decree failed, and, was dismissed vide judgment dated 23.09.2013, the plaintiff is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that the sale deed No.4274 dated 14.09.2006, registered and executed by defendants No.3 to 5, in favour of defendant No.1 Manjit Kaur, was wholly illegal, void and inoperative, qua his rights. A decree for injunction was also

claimed restraining the defendants from causing any interference in possession of the plaintiff over the house bearing No.C-1/1287, as fully shown in the site plan appended with the plaint, situated in Mukharjee Park, Jagadhri, District Yamuna Nagar. It was maintained that defendant No.3 happened to be the mother of the plaintiff and defendants No.4 and 5 were his brother and sister, respectively. Originally, the suit property was owned by Sh.Babu Ram i.e.father of the plaintiff and, post his death, the same was succeeded to by his heirs in equal shares. Therefore, the plaintiff was one of the co-sharers, but, was in exclusive possession of the entire house. However, defendants No.3 to 5, in collusion with defendants No.1 and 2, were threatening to interfere in the peaceful possession of the plaintiff over the suit property. Thus, the suit.

In a separate written statement filed by defendants No.1 and 2, it was pleaded that although plaintiff happened to be one of the co-sharers in the suit property, along with defendants No.3 to 5, but defendant No.1 had only purchased a share from defendants No.3 and 4, vide sale deed dated 14.09.2006, and was put in possession of a portion of the house to the extent of her share. A civil suit was already pending between the plaintiff and defendants No.3 to 5 and in the said suit, Smt.Ram Piari etc. had obtained permission of the Court, vide order dated 21.08.2006, to alienate the suit property to the extent of their share. That is how, defendants No.3 to 5 had sold their share to defendant No.1.

Likewise, even defendants No.3 to 5 filed a similar written statement and it was denied that the plaintiff was in exclusive

possession of the entire house.

On a due and thoughtful consideration of the matter in issue and the evidence on record, the Courts below concurrently concluded that the sale deed Ex.D1, itself, revealed that it only pertained to sale of half share in the house in dispute i.e.share pertaining to defendants No.3 and 4. The onus to prove that the plaintiff was indeed in exclusive possession of the entire house was upon the plaintiff himself. Nothing was brought on record, least any cogent or credible evidence, to show that the plaintiff alone was in occupation and possession of the suit property. Whereas, evidence on record showed that defendants No.3 to 5 have been in possession of the suit land to the extent of their respective shares. Ram Piari-DW2 had testified in her statement that defendant No.2 Ashok Kumar was residing in the suit property, with respect to half portion, prior to the execution and registration of the sale deed in favour of defendant No.1. And possession of the said portion was handed over by defendants No.3 and 4 to defendant No.1, on the spot. Since then, Smt.Manjit Kaur- defendant No.1, was in possession of the said half portion of the house. Once, the plaintiff failed to prove himself to be in exclusive possession of the entire house, he was rightly declined a decree for injunction against another co-sharer. Particularly, when she was found to be in possession of a part of the suit property.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any

material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

04.11.2015

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**(ARUN PALLI)
JUDGE**