IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

RSA No. 5246 of 2014
Date of decision : July 06, 2015

* * * * *

Brij Mohan Dhand

.....Appellant

Versus

Hardeep Singh and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Bhag Singh, 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?*

RITU BAHRI, J

Plaintiff-appellant (hereinafter referred to as `the plaintiff') has filed this regular second appeal against the judgment dated 1.8.2011 passed by the Civil Judge (Junior Division) Chandigarh whereby the suit for declaration and mandatory injunction filed by the plaintiff against the defendants-respondents (hereinafter referred to as `the defendants') was dismissed and the judgment dated 1.7.2014 passed by the Additional District Judge, Chandigarh whereby the appeal against the judgment and decree of the trial Court was dismissed.

A residential plot bearing no. 264, Sector 46-A, Chandigarh was sold by Parkash Chand Dhand to Lt. Col. C.S Toor

RITU
2015.07.30 10:58
I attest to the accuracy and
authenticity of this document
Chandigarh

and Jaskaran Singh vide agreement to sell dated 8.2.1993 after receiving the sale consideration of Rs.1.85 Lacs for which he issued receipt Ex. D-2. Sh. Parkash Chand Dhand handed over all the documents of title to the prospective vendees Lt. Colonel C.S Toor and Jaskaran Singh and also handed over the possession to them. Thereafter, the property in question was purchased by defendant from Lt. Col. C.S Toor and Jaskaran Singh vide agreement to sell dated 4.8.1993. Plaintiff when appeared in the witness box as PW-1 has admitted that he was not in possession of the plot in question.

A Will Ex D-4 was executed in favour of Lt. Colonel C.S Toor **and Jaskaran Singh** which was got registered in the office of Sub-Registrar, UT, Chandigarh. After obtaining necessary permission from the Chandigarh Administration, Lt. Colonel C.S Toor **and Jaskaran Singh** got sanctioned the site plan and raised construction on the plot in dispute. The house so constructed on the plot was agreed to be sold by Lt. Colonel C.S Toor **and Jaskaran Singh** to defendant no.1-Hardeep Singh, Balwinder Singh and Ravinder Singh vide Agreement to Sell Ex. D-10. The Will Ex. D-4 executed by Parkash Chand Dhand in favour of Lt. Colonel C.S Toor **and Jaskaran Singh** was cancelled with their consent. At the instance of Lt. Colonel C.S Toor, he executed Will Ex. D-12 in favour of defendant no.1 and executed Power of Attorney in favour of Maninder Kaur wife of defendant no.1-Hardeep Singh. On the strength of this Power of Attorney Ex. D-13, Maninder Kaur obtained

RITU
2015.07.30 10:58
I attest to the accuracy and
authenticity of this document
Chandigarh

Conveyance Deed of the Lease Hold property from Chandigarh Administration on 25.3.1999 and copy of is Ex. D-17.

The only plea of the plaintiff was that the Will could not have been executed by Sh Parkash Chand Dhand in favour of Hardeep Singh as Hardeep Singh was not related to Sh. Parksh Chand Dhand. Moreover, there was no reason to exclude the natural legal heirs as she and three sisters namely, Kamla Puri, Prem Lata Arora and Surinder Bala Bhatia are the only legal heirs and thus the Will is manipulated. The suit of the plaintiff has been dismissed by both the Courts as plaintiff while appearing as PW-1 admitted that he was not in possession of the plot and his father did not raise any construction during his life time. At the same time Lt. Colonel C.S Toor and Jaskaran Singh after taking necessary permission from Chandigarh Administration had got sanctioned the site plan and built a house on the said plot. The Will in favour of defendant no.1-Hardeep Singh, Ex. D-12 was registered in the office of Sub Registrar U.T and was duly proved by **DW-1 Jaskaran Singh who was one of the attesting witnesses**. It was not the case of the plaintiff that somebody else had impersonated Sh. Parkash Chand Dhand and the Will was result of fraud. The execution of Will Ex. D12 was rightly examined by both the Courts in the wake of testimony of DW-2 Harmanpreet. After the death of Sh. Parkash Chand Dhand in the year January 2008, the plot in question was transferred on 6.1.2008 on the basis of registered Will dated 19.8.1993, in favour of defendant no.1-Hardeep Singh and DW-5

RITU
2015.07.30 10:58
I attest to the accuracy and
authenticity of this document
Chandigarh

Sanjivan Sharma has been duly examined by the defendants to prove this Transfer Deed Ex. DW5/1. Maninder Kaur wife of Hardeep Singh obtained Conveyance Deed of the Lease Hold Property from Chandigarh Administration on 25.3.1999. The transfer of Property by way of execution of General Power of Attorney has come up for consideration before this Court in the case of ***Jeet Kumari vs. Girdhari Lal 2003 (3) Civil Court Cases 239 (P&H)***, **where on receipt of entire sale consideration amount, power of attorney was executed in favour of vendee and he put into possession of the premises. It was held that contract of sale of immovable property though does not create any interest in or charge on such property yet where a contact of sale is not a mere agreement to sell but more than that because practically the transaction was complete in all respects except the execution of regular sale deed and registration thereof, such conctract of sale definitely creates an interest in the property and the same is protected under Section 53-A of the Transfer of Property Act, 1882**. The facts of the present case are covered by the ratio of the above said judgment. The transfer in the present case took place in the year 2008. In the judgment passed by the Supreme Court in the case of ***Suraj Lamp & Industries Private Limited vs. State of Haryana and another SLP (C) No. 13917 of 2009***, it was held that immovable property can be legally and lawfully transferred/conveyed only by way of a registered deed of conveyance. Transactions of the nature of GPA or SA/GPA/Will transfers do not convey title and do

RITU
2015.07.30 10:58
I attest to the accuracy and
authenticity of this document
Chandigarh

not amount to transfer nor can they be recognized or valid mode of transfer of immovable property. In paragraph 17 of this judgment, it has further been observed that this decision should be made applicable prospectively to avoid hardship. The transfer in this case took place in the year 2008. Therefore, this authority is not applicable to the facts of the present case. The judgment of this Court in **Jeet Kumari's case (supra)** was well applied by both the Courts.

In view of all that has been discussed above, there is no infirmity or illegality in the judgments passed by the Courts below. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 06, 2015 **(RITU BAHRI)**
ritu **JUDGE**

RITU
2015.07.30 10:58
I attest to the accuracy and
authenticity of this document
Chandigarh