

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6207 of 2014
Date of decision : December 1, 2015

Sarwran Kumar

..... Appellant

Versus

Sham Sunder and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. APS Sandhu, Advocate
for the appellant.

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 appellant-plaintiff is in Regular Second Appeal against the concurrent finding of fact whereby the suit claiming declaration viz-a-viz ownership and permanent injunction from interfering into the suit property has been dismissed.

Learned counsel for the appellant submits that the suit property was owned by Tilak Raj who admittedly died intestate on 27.12.1990. Thus, all the legal heirs i.e. plaintiff, his brothers and mother inherited their respective shares. The sale deed dated 21.11.1994 executed by Ram Piari w/o Tilak Raj in favour of Harish Kumar, though, had not been specifically challenged, evidence has been lead and therefore the courts below ought not to have non-

suited the plaintiff, in view of the settled law that where the parties are alive to their respective pleadings and lead evidence, and in the absence of any specific issue or challenge, it would not be open to a opposite party to raise objection.

He further submits that Harish Kumar had entered into an agreement to sell dated 16.7.1999 with Sham Sunder but since he did not perform his part of the agreement Sham Sunder filed a suit for specific performance which was decreed ex-parte on 20.09.2004 thus, Harish Kumar and Ram Piari snatched right and claim of of other legal heirs of Tilak Raj. The aforementioned facts have not been noticed by both the courts below, thus, there is illegality and perversity in the impugned orders.

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

No doubt, that the sale deed dated 21.11.1994 has not been challenged, but evidence has been lead. Except a self serving statement, there is no independent evidence to show/prove that Ram Piari did not have any title and third party right has also been created in pursuance to the order dated 20.09.2004 in a suit for specific performance of agreement to sell dated 16.7.1999.

It is a matter of record that other siblings of the plaintiff have not challenged the sale deed. Both the courts below have correctly held that the plaintiff failed to discharge the onus.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the

aforementioned judgment and decree of the appellate court.

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

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 1, 2015
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