

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6276 of 2014 (O&M)

Date of Decision: 04.05.2015

Smt. Shanti Devi

..... Appellant

Versus

Om Parkash and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nipun Vashist, Advocate,
for Mr. R.K. Narang, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

CM No.14996-C of 2014

This is an application for condoning the delay of 398 days in refiling the appeal.

For the reasons stated in the application, the same is allowed and the delay of 398 days in refiling the appeal is condoned.

RSA No.6276 of 2014 (O&M)

The suit for specific performance filed against the husband of the appellant remained successful in Civil Suit No.450 of 2000, titled *Smt. Savitri Devi vs. Om Parkash*. The plaintiff's suit was decreed and defendant's first appeal failed against which RSA No.737 of 2015 was filed which came up for hearing today before me. The appeal has been dismissed after hearing the counsel for Om Prakash, who is the respondent herein.

After the plaintiff filed a suit against the husband of the appellant on August 17, 2000 to enforce the sale agreement, the present appellant Smt. Shanti Devi filed a counter suit on September 02, 2000 against her husband Om Parkash and Smt. Shanti Devi claiming a declaration to the effect that the suit land was already given to her as part of a family settlement dated December 03, 1999 dividing property and, therefore, her husband has no right to sell the suit property which had fallen to her share by the family arrangement. The suit was obviously filed to remove the base of previous suit and had no legs to stand on. This suit has also failed and the appeal against the decree stands dismissed leading to the present second appeal under Section 100 CPC. A finding has been recorded that the alleged settlement did not find its way to the revenue record and, therefore, the prospective buyer was in the same position of a bona fide purchaser without notice of alleged encumbrance for valuable consideration of suit corpus. In short, the courts *a quo* have disbelieved the story propounded by the present appellant Smt. Shanti Devi to obstruct the claim for specific relief pressed by the proposed vendee.

I have heard Mr. Nipun Vashist, learned counsel appearing for the appellant and on hearing him on the grounds of appeal find no cogent reason to disturb the findings of fact recorded by both the courts below where no probative weight has been attached to the family settlement which quite apparently was propounded to try and defeat the sale agreement by a counterblast and with a view to set up a defence to the suit for possession by way of specific performance filed by the purchaser just a few days before the present suit was instituted. There is no merit in this appeal warranting an

interdict of the well reasoned orders passed by the courts below and would without hesitation dismiss the appeal in limine as not giving rise to a question of law much less a substantial one demanding an admission of the appeal for any further consideration on the merits when valuable rights have settled in favour of the decree holder.

(RAJIV NARAIN RAINA)
JUDGE

04.05.2015
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