IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.462 of 1988 (O&M)
Date of decision : 13.01.2016

Wahid (deceased through LRs)

...Appellant

Versus

Amar Singh (deceased through LRs) 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. Ashok Kumar Khubbar, Advocate for the appellant.

Mr. Robin Dutt, Advocate for respondents.

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AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the lower Appellate Court dated 04.11.1987, whereby suit for possession by way of pre-emption challenging the sale deed dated 25.06.1984 executed by other co-sharer in respect of land measuring 3 kanals 15 marlas, has been dismissed, in essence, the judgment and decree of the trial Court dated 14.01.1987, has been set aside.

Mr. Ashok Kumar Khubbar, learned counsel appearing on behalf of appellant-plaintiff submits, that aforementioned suit was filed on the premise that as per the jamabandi, the aforementioned land was in joint khata and the appellant-plaintiff had 3/8th share of the land of 10 kanals and the defendants have sold the land for consideration of ₹13,000/- and thus defeated the right of pre-emption. A sum of ₹23,000/- so written in the sale deed, whereas it is only ₹11,000/- was paid before the Sub-Registrar. The aforementioned suit was contested by the defendants by filing the joint written statement that defendants have purchased the land from the Vendor for a valuable consideration. The co-ownership of the plaintiff was seriously disputed. It was stated that defendants after purchase of the land, spent a sum of ₹1500/- on development and in case any relief is granted to the plaintiff, the defendants are entitled to the amount which was spent on development of the land in dispute and the suit was bad for partial pre-emption. The trial Court on the basis of the documentary evidence i.e. Ex.P2 jamabandi for the year 1980-81 found that Nazim Hassan, Wajid Hassan, Khalid Hassan, Walid Hassan and Galib Hassan were co-sharer without getting share of the partition, the aforementioned Nazim Hassan, Wajid Hassan, Khalid Hassan, Walid Hassan and Galib Hassan sold the land to the respondents-defendants. However, the lower Appellate Court reversed the finding by taking into consideration the cross-examination of the plaintiff that parties were cultivating the separate share, in essence, formed an opinion that there was a partition. He submits that oral evidence would not prevail upon documentary evidence. Position would be converse. He further submits that as per the judgment of Hon'ble Supreme Court in *Shyam Sunder and another Vs. Ram Kumar and another, JT 2001(6) SC 94, &* even after the repealment of the Punjab Pre-emption Act in case suit is instituted at the time when the Act was invogue, it would not be hit by the repalement of the Act and thus submits that following substantial questions of law arises for determination:-

1. Whether oral evidence shall prevail upon documentary evidence or not?

2. Whether the judgment and decree of the lower Appellate Court is erroneous, perverse as there has been mis-appreciation and misreading of the documentary evidence?

Mr. Robin Dutt, learned counsel appearing on behalf of respondents-defendants submits, that once there is categoric admission of the plaintiff that the parties had been cultivating the land in all their respective shares though there is no entry in the revenue record, it shall be construed to be deemed partition. Even entry in the revenue record do not show joint khata. In support of his contention, he has relied upon judgment of this Court in *Arjan Singh Vs. Financial Commissioner, 2001(1) Civil Court Cases 645 (P&H)*.

I have heard learned counsel for the parties and appraised the paper book and of the view that substantial questions of law noticed above are liable to be answered in favour of appellant-plaintiff for the following reasons:-

Ex.P2 Jamabandi would reveal that all the co-sharers were having respective share, in essence, having a joint khata. It is a settled law that until and unless the factum of the parties is not recorded in the revenue record, the arrangement between the parties would not tantamount to deemed partition and the ratio decidendi culled out by the judgment of this Court in *Arjan Singh's case (supra)* would not applicable to the facts and circumstances of the case. The sole reason which weighed in the mind of lower Appellate Court was the few lines of the admission of the plaintiff ascertained during the cross-examination. In the absence of any evidence to the contrary, the lower Appellate Court ought not to have formed an opinion than the one rendered by the trial Court, whereby suit aforementioned has been decreed. In view of ration decidendi culled out in Shyam Sunder's case (supra), the suit for pre-emption is maintainable as it was filed on 15.06.1985 as the sale deed is of 25.06.1984.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored, in essence, the suit is decreed.

Appeal stands allowed.

13.01.2016 **(AMIT RAWAL)**
pawan **JUDGE**